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(16,974.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 127.

THE STEAMSHIP "PANAMA," MANUEL QUEVEDO, CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 3, 1899.

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1 In the District Court of the United States, Southern District of Florida.

UNITED STATES OF AMERICA
vs.
THE STEAMER PANAMA. } Prize.

To the Honorable James W. Locke, judge of the district court of the United States for the southern district of Florida:

The libel of Joseph N. Stripling, attorney of the United States for the southern district of Florida, who libels for the United States and for all parties in interest, against the s-eam vessel Panama, her tackle, apparel, furniture, and cargo, in a cause of prize, alleges:

That, pursuant to instructions from the President of the United States, William H. Everett, Lt. commander of the United States Navy, in and with the United States ship of war the Mangrove, her officers and crew, did, on the 25th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the said steam vessel Panama, with a valuable cargo on board of the same, and that the said ship and cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subject to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may by the proper process of this court be duly notified of the allegations and prayers of this libel and cited to appear and claim the same; that the nature, amount, and value of said cargo may be determined, and that on proper proofs being taken and heard and all due proceedings being had the said Panama, together with her tackle, apparel, furniture, and cargo, may on the final hearing of this cause by the definitive sentence and decree of this court be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

(S'd) J. N. STRIPLING,
U. S. Attorney, S. D. of Florida.

Let attachment and mo-tion issue as prayed, returnable Wednesday, *day of* 11th May, 1898 A. D., at 10.30 a. m.

Entered as of course.

(S'd) E. O. LOCKE, *Clerk*,
By J. OTTO, *D'y Clerk.*

Endorsed: Filed April 26th, 1898. (S'd) E. O. Locke, clerk.

2 UNITED STATES OF AMERICA:

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting:

You are hereby commanded forthwith to attach, seize, and take into your custody the Spanish steamer Panama and cargo, wheresoever the same may be found within your precincts, and the same you are required to keep until the further order of this court, to answer the claim of the United States for prize.

And how you shall have executed this precept make known to the said court, at the court-rooms, in Key West, Fla., the 11th day of May, A. D. 1898, at 10.30 o'clock a. m., by a return hereof, with your certificate of execution hereon written.

Witness the Honorable James W. Locke, judge of the said court, at Key West, in said district, this 26th day of April, in [SEAL.] the year of our Lord one thousand eight hundred and ninety-eight, and Independence of the United States the hundred and twenty-second.

(S'd) E. O. LOCKE, *Clerk*,
(S'd) By J. OTTO, *D'y Clerk*.

Endorsed: Received the within writ of attachment April 26th, 1898, and duly executed the same as within commanded by attaching and taking into custody the Spanish steamer Panama. (S'd) John F. Horr, U. S. marshal, so. dist. of Fla., (S'd) by Alfred Atchison, deputy marshal. Filed April 26th, 1898. (S'd) E. O. Locke, clerk.

3 UNITED STATES OF AMERICA:

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting:

Whereas, on the 26th day of April, A. D. 1898, the United States of America, by its proctor, Joseph N. Stripling, Esq., filed in the office of the clerk of said court *their* libel against the Spanish steamer Panama in a cause of prize, civil and maritime, alleging in substance that she was captured by the U. S. S. Mangrove on April 25th, 1898, as a prize of war.

Wherefore the said libellant pray- that the usual process of attachment may issue against the said Spanish steamer Panama; that monition may issue citing all parties having or claiming any interest or property in said steamer Panama to appear and answer upon oath all and singular the matters aforesaid, and that this court will be pleased to decree to the libellant the proceeds of said

prize for services in said cause, and that the said steamer Panama may be condemned and sold to pay said prize money with costs, charges, and expenses, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive; and whereas the judge of said court has ordered that attachment and monition be issued as prayed, returnable on Wednesday, the 11th day of May, A. D. 1898:

Now, therefore, you are hereby commanded forthwith to cite and admonish all persons whomsoever having any right, title, claim, or interest in or to the said steamer Panama to appear at an admiralty session of said court, to be held in the court-rooms of said court, at Key West, in said district, on Wednesday, the 11th day of May, A. D. 1898, at 10.30 o'clock in the forenoon of that day, to show cause, if any they have, why it should not be decreed according to the prayer of the libellant, and to attend upon every session of said court from that time held until a final decree shall be rendered in the premises.

And this you are required to do by serving on the master of said vessel a true copy hereof and by posting two such other copies in the most public places of Key West & publishing a copy in the Key West Advertiser once a week for two weeks.

And how you shall executed this precept make known to this court by a return hereof on or before the 11th day of May aforesaid, with your certificate of execution hereon written.

Witness the Hon. James W. Locke, judge of said court, at Key West, in said district, this 26th day of April, in the year [SEAL.] of our Lord one thousand eight hundred and ninty-eight, and of the Independence of the United States the hundred and twenty-second.

(S'd) E. O. LOCKE, *Clerk*,
(S'd) By J. OTTO, *D'y Clerk*.

A true copy.
Attest: —— ——.

Endorsed: Received the within writ of monition April 26th, 1898, and duly executed as within commanded by reading the original to the master of the Spanish steamer Panama and posting two copies. (S'd) John F. Horr, U. S. marshal, so. dist. of Fla., (S'd) by Alfred Atchison, deputy marshal. Filed April 26th, 1898. (S'd) E. O. Locke, clerk.

4 At a stated term of the district court of the United States for the southern district of Florida, held in the United States court-rooms, at Key West, on the — day of May, 1898.

Present: Hon. James W. Locke, district *court*.

THE UNITED STATES
against
THE STEAMSHIP PANAMA AND HER CARGO.

And now Manuel Quevedo, master and lawful bailee of the steamship Panama, intervening as bailee for the interest of the Compania Transatlantica in the said steamship Panama, her engines, boilers, tackel, apparel, furniture, and equipment, appears before this honorable court and makes claim to the said steamship, &c., as the same are attached by the marshal, under process of this court, at the instance of the United States of America, under a libel against said steamship, her cargo, &c., as a prize of war; and the said Manuel Quevedo avers that before and at the time of the alleged capture of said steamship, her cargo, &c., the above-named Compania Transatlantica, a Spanish corporation of Barcelona, Spain, was the true and *bona fide* owner of the said vessel, her engines, boiler, tackel, apparel, and furniture; that no other person was the owner thereof, and that he was in possession thereof as lawful bailee for the said owner, and that the vessel if restored will belong to the said company, and he denies that she was lawful prize.

Wherefore the said Manuel Quevedo, for and in behalf of the said Compania Transatlantica, for whom he is duly authorized to make this claim, prays to be admitted to defend accordingly, and to show cause, pursuant to the terms of the monition issued herein and served upon the said steamship and upon the master thereof as bailee, why the said steamship, her engines, &c., were not liable to be treated as enemy's property at the time and place and under the circumstances of the alleged capture, and why she should not be condemned as lawful prize of war, but should be restored with damages and costs.

(S'd) M'L QUEVEDO.

Sworn to before me this 18th day of May, 1898.
(S'd) JULIUS OTTO, *D'y Clerk.*

(S'd) CONVERS & KIRLIN,
(S'd) G. BOWNE PATTERSON,
Proctors for Claimants.

Endorsed: Filed May 18th, 1898. (S'd) E. O. Locke, clerk.

(*Test Affidavit.*)

U. S. District Court, Southern District of Florida.

THE UNITED STATES
against
THE STEAMSHIP PANAMA AND HER CARGO. } Test Affidavit.

6 SOUTHERN DISTRICT OF FLORIDA, *ss:*

MANUEL QUEVEDO, being duly sworn, deposes and says as follows:

1st. I am the claimant herein and have verified the claim on knowledge derived from my position as master of this vessel and of two others belonging to the same company and from my official communications with the Compania Transatlantica, of Barcelona, Spain, and its various agents and representatives. The claim herein cannot be verified by the company or any of its officers, because all are absent from the United States, and the company has no agent within this district.

2nd. The Panama is a Spanish merchant vessel, which for a number of years has been carrying cargoes, passengers, and the mails between ports of the United States, Cuba, Mexico, and South America. In the ordinary course of her business as a common carrier she sailed from the port of New York on the 20th day of April, 1898, having been consigned there to Juan M. Ceballos, a native-born American citizen trading under the firm style of J. M. Ceballos & Co., under whose agencey the steamer was laden and dispatched. The steamer conformed there in all things to the laws and regulations of the United States and of said port, and was duly cleared from the custom-house with a miscellaneous cargo and 29 passengers for a voyage to Havana, in the island of Cuba, and to ports in Mexico. I did not know any of the passengers nor their business prior to their taking passage.

3rd. The mounted guns and the small arms which she carried had not been shipped in expectation of hostilities between the government of Spain and the United States nor for the purpose of war, but were there pursuant to the terms of a contract between
7 the company & Spanish government for a marine mail service (passed Nov. 18th, 1886, and still in force). The 26th art. of the said contract, which applies to this and to other steamers of the company, provides:

"Art. 26. Every ship shall carry for her own defense the following armament: (2) two guns, Hontoria's system 9 c/m caliber, with powder and ammunition for 30 shots per gun; (20) twenty Remington guns or carbines, with 100 shots each, with baion-ette or sword, and (20) twenty marine swords."

The two Hontoria guns had been mounted for more than three years, but were not fitted for action at the time of the vessel's seizure. The breeches of the guns at that time were detached and were below, where they remained until removed from the ship by the

order of the U. S. marshal in Key West harbor. The steamer was not actually provided with the full amount of ammunition called for by the contract, as above quoted. The Remington rifles, shipped many years ago, were not of modern pattern. The twelve Mauser rifles of smaller bore and the Maxim gun were shipped more than a year ago to maintain the equipment for the defense of the vessel and the mails according to the true intent of the contract.

4th. It appeared from the Panama's papers at the time of her capture, and was a fact, that her cargo had been taken on board prior to May 21st, 1898. She did not have on board, so far as I then knew or was informed or now know or am informed, any officer in the military or naval service of Spain, all of the passengers who were on the vessel having been received on board in the ordinary course. The vessel, as I am informed and believe, is not
8 otherwise excluded from the benefits or privileges of the President's proclamation of April 26th, 1898.

5th. At all times prior to the ship's seizure, on or about April 25th, 1898, I and my officers were in ignorance of the existence of a state of war between the government of Spain and the United States and of any blockade of the port of Havana.

6th. While on said voyage and in due prosecution thereof, at about 5.50 p. m. of April 25th, 1898, said steamer Panama, being then about 25 miles N. 50″ E. from the Morro at Havana, was seized and wrongfully captured by the United States ship of war Mangrove, under the command of a line officer of the United States Navy, and by means of a prize crew then and there placed on board was forcibly brought with her said cargo to the port of Key West. On being stopped by said United States ship of war Mangrove, and being informed of the existance of war and of blockade of the port of Havana, the master and officers of the Panama submitted without resistance to seizure and to the placing of a prize crew on board of said vessel, proceeding therewith, under her own steam, into the port of Key West as directed.

7th. I am informed and believe that by the existing policy of the Government of the United States, as evidenced by repeated declarations of its Executive and by the proclamation of the President of the United States issued and published April 26th, 1898, as well as upon principals in harmony with the present views of nations and sanctioned by recent practice, in acco-dance with which the President has directed that the war should be conducted, the steamship Panama, at the time and place and the circumstances under which she was seized, was not liable to be treated as enemy's prop-
9 erty, but, on the contrary, having sailed from a port in the United States prior to the 21st of May, 1898, was exempt from capture as a prize of war.

8th. Since my examination *in preparatorio*, wherein I was questioned about the insurance on the vessel, I have been informed by a cable sent to J. Bertschmann, Swiss consul at New York, by the secretary of the Associated Board of Underwriters in Paris, and state the fact to be, that the Panama is insured against war risks, including capture, for her full actual value, in the following 29 in-

surance companies, of which 13 are French companies, viz: The Fonciere, the General, the Union Maritime, the Sphire, the Armorique, the Commercial, the Central, the Triton, the Pilote, the Virgie, the Nereide, the Simon, the Loise; 9 are English companies, viz., the Ocean Marine, the Thames & Mersey, the Alliance, the Reliance Marine, the World, the Marine Underwriters, the London, & Provincial; 2 are German companies, viz., the Allemands, the Frankfortaise; two are Austrian companies, viz., the Phœnix, the Franco-Hongroise; two are Swiss companies, viz., the Fedocale, the Fortuna; and one is an Italian company, viz., the Savoia. On information and belief I say that if the Panama be condemned as prize of war in this cause the loss will fall on the foresaid companies, all of which are associations or corporations under the laws of neutral States, and that I am authorized by the said companies to represent these facts to the court.

(S'd) M'L QUEVERO.

Sworn to before me this 18th day of May, 1898.

(S'd) J. OTTO, *D'y Clerk.*

(Endorsed:) Filed May 18th, 1898. (S'd) E. O. Locke, clerk.

10 District Court of the United States for the Southern District of New York.

UNITED STATES OF AMERICA *against* THE STEAMSHIP PANAMA AND HER CARGO. } Supplementary Test Affidavit.

COUNTY OF MONROE, *State of Florida, Southern District of Florida,* } ss:

Manuel Quevedo, being duly sworn, says that he is the master of the Panama, has been examined *in preparatorio* herein, and verified the claim and test affidavit.

Deponent further says that at the time of his examination *in preparatorio* he produced before the commissioners a printed pamphlet embodying an extract from the mail contract between Compania Transatlantica and the Spanish government, passed the 18th day of November, 1896; that said extract was incomplete, in that it did not contain, amongst others, article 64 of the contract, which provides the terms upon which the government is entitled under it to take possession of the vessels in case of war. This article provides that in case of the suspension of the mail service by war the State can take possession of the vessels of the company, with their furniture and equipment, on the basis of the valuation by a commission composed of two persons selected by the gove-nor making the impressment and two by the contracting company, the four thus selected to choose the fifth. At the termination of the war it is provided that vessels so taken shall be returned to the
11 contracting company, with their furniture and ordinary equipment, at the valuation fixed by the commission, with

an indemnity for damage, and that the government shall pay the company during the time that it holds possession of the vessels a rental of five per cent. on the valuation fixed by the commission.

Deponent further asks leave to submit the whole of the said contract to the court, it being contained in a printed book filed herewith, marked Exhibit "A," endorsed "Derecho Maritimo Compania Transatlantica," at pages 221 to 251, inclusive. This book, Derecho Maritimo, was in the chart-room of the Panama, to which the prize master had access when on board. He further says that on April 28th the officers of the court were on board and examined the ship's papers, taking such as they wanted, leaving this book in its place.

Deponent further says that up to the time of her capture the Spanish government had not taken possession of the Panama under under the terms of said contract, and that — the said vessel, nor was there any naval officer or naval men on board at that time.

(S'd) M'L QUEVEDO.

Sworn to before me this 24th day of May, 1898.

(S'd) J. OTTO, *D'y Clerk.*

(Endorsed :) Filed May 24th, 1898. (S'd) E. O. Locke, clerk.

12 (*Order Refusing Leave to Take Further Proof.*)

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA
against
THE STEAMER PANAMA AND HER CARGO. } Prize.

And now comes Manuel Quevedo, master, claimant of the Panama herein, and upon his test affidavit and supplementary test affidavit and upon all the other proceedings in the cause asks leave to take further and additional proofs respecting the matters set forth in the said test affidavit and supplementary test affidavit.

(S'd) CONVERS & KIRLIN,
(S'd) G. BOWNE PATTERSON,
Proctors for Claimant.

Key West, Fla., May 27th, 1898.

Upon consideration the above motion is denied.

Dated Key West, May 27th, 1898.

(S'd) JAMES W. LOCKE,
U. S. District Judge.

(Endorsed :) Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

13 (*Decree.*)

In the District Court of the United States, Southern District of Florida. In Admiralty.

UNITED STATES
against
STEAMER PANAMA AND CARGO. } Prize.

This cause having come on to be heard upon the libel and proofs and testimony taken *in preparatorio*, and all due proceedings having been had and claims to the vessel and cargo filed, and it appearing to the court that the said steamer Panama is enemy's property and was upon the high seas at the time of the President's proclamation exempting certain vessels from arrest, it is hereby ordered, adjudged, and decreed that the said steamer Panama be condemned and forfeited to the United States as lawful prize of war, and that the marshal proceed to advertise and sell said vessel, after due and proper notice, at public auction, in accordance with the law, and that the proceeds be deposited with the assistant treasurer of the United States at New York.

In the matter of the claim to certain items of cargo of said steamer Panama by J. B. Carberry & Co., it appearing that said goods belonged to and were the property of American citizens of New York, and that the title had not passed to enemies of the United States, it is ordered, adjudged, and decreed that the said claim be allowed and the said goods, consisting of 2,798 bags
14 of corn and 200 bags of bran, be restored and delivered to the claimants, or if any of the same have been sold under any order of this court the proceeds be so restored and delivered.

In the matter of the claim of Samuel Hermanes for certain property of the cargo of said steamer Panama, it appearing that the said property was shipped by said claimant, a British citizen and resident of New York, and that the shipments were made to certain merchants, citizens and residents of Mexico, and were not the property of enemies of the United States, it is ordered that said shipments, consisting of shoes, watches, and lumber, be restored and delivered to the claimants thereof.

In the matter of the claim of Josephine W. Wupperman, an American citizen of New York, it appearing that said cargo was shipped by said claimant as such citizen of New York to various parties, citizens of Mexico and neutrals, that the property was the property of said American citizen or said neutrals, it is ordered that the said claims be allowed and said property so shipped by said claimant be restored and delivered to said claimant.

In the matter of the claim of Alfred M. Seixas, an American citizen of New York, it appearing that the property herein claimed, although shipped upon the order of alien enemies of the United States, was shipped to the agent of said Sexias, and was not to be delivered until payment was made, and that no title passed from the American shipper, but was retained by him, it is therefore or-

dered that said property so claimed by him be restored and delivered to the claimant.

In the matter of the claim of Mosle Bros., American citizens, although it is alleged that claimants retained their title to
15 the property, it appears from the evidence of the bills of lading that the shipments were made to order and the bill of lading, duly endorsed, was forwarded to merchants of Nuevitas, Cuba. This appears to be a case in which further proof may be allowed, and it is so ordered.

In the matter of the claim of Anthony R. Maicas for certain boxes of bran and packages of hardware consigned to parties whose citizenship is unknown, it is ordered that claimants have permission to introduce further proof in regard to the title to the property so claimed.

In the matter of the claim of R. Fabien, it not satisfactorily appearing in whom title to the property embodied in this claim is, it is ordered that the claimant have leave to introduce further proof.

In the matter of the claim of J. & M. Menendez, naturalized citizens of New York, it being alleged in the test affidavit under such claim that the property was shipped to certain parties in the port of Havana, but the title was not to pass to consignee until same was paid for, but the testimony on said point being unsatisfactory, it is ordered that claimant be permitted to introduce further proof in support of said allegation.

In the matter of the claim of Joaquin A. Modina and Jose P. del Castillo, comprising the firm of J. Modina & Co., of New York, citizens of the United States, although the test affidavit claims that the goods were still the property of the claimant, yet the bill of lading shows them consigned to Toman, Hoar & Co., of Nuevitas,
Cuba, and to be without any restricting clause or limit to
16 passage of title. Proof being unsatisfactory, the claimants are permitted to file further proofs to establish their ownership.

And it further appearing that there were certain portions of said cargo shipped from Carlos Booth & Co., of New York, and George W. Mitchell, of New York, to certain parties in Mexico, presumptively Mexican citizens and neutrals, and there being nothing to show that said property, the same being shipped from an American port to a neutral port, was enemy'- property, it is ordered the owner have sixty days to file a claim herein and introduce proof in support thereof.

And it is further ordered that all the cargo of said vessel unclaimed and not provided for in this decree is condemned and forfeited and ordered to be sold and the proceeds deposited with the assistant treasurer at New York, in accordance with law, and in event any of the property herein ordered to be restored has been sold the claims allowed be good as against the proceeds thereof.

It is further ordered that the several parties herein, claimants,

who are permitted to file further proofs of ownership, have sixty days to file same.

(S'd) JAMES W. LOCKE, *Judge.*

Key West, Fla., May 27th, 1898.

(Endorsed :) Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

17 (*Prayer for Appeal.*)

United States District Court, Southern District of Florida.

THE UNITED STATES, Libellant, Appellees,
against
THE STEAMSHIP PANAMA; MANUEL QUEVEDO, Claimant, Appellant. } Prize.

And now comes Manuel Quevedo, claimant, considering himself ag-reived by the decision and decree of condemnation herein, and alleging error in the said decree appears in open court and appeals therefrom to the Supreme Court of the United States : he presents herewith an assignment of errors complained of and a bond for costs, with surety in the sum directed by the court, and thereupon prays that his said appeal may be allowed, and that the record and all proceedings may be duly certified to the Supreme Court of the United States in accordance with the rules and practice for such cases made and provided, to the end that the said appeal may be heard and determined by the said court.

Key West, Fla., May 28th, 1898.

(S'd) M'L QUEVEDO.

(S'd) CONVERS & KIRLIN,
(S'd) G. BOWNE PATTERSON,
Proctors for Appellant.

(*Order Granting Appeal.*)

18 Upon reading and filing the foregoing notice and prayer of appeal and the assignment of errors and bond on appeal, the appeal of the claimant, Manuel Quevedo, is hereby allowed.

(S'd) JAMES W. LOCKE,
U. S. District Judge.

Key West, Fla., May 28th, 1898.

(Endorsed :) Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(*Assignment of Errors.*)

United States District Court, Southern District of Florida.

THE UNITED STATES, Appellees,
vs.
THE PANAMA, Appellant.

The claimant and appellant assigns error to the final decision and decree of the district court as follows :

1st. For that the court held and decided that the Panama was lawful prize of war.

2d. For that the court omitted and refused to hold that the Panama was not lawful prize of war.

3d. For that the court omitted and refused to find that the Panama was privileged and exempt from capture and condemnation as prize under and by virtue of the President's proclamation issued April 26th, 1888.

19

4th. For that the court omitted and refused to find that the Panama was exempt from capture and condemnation by reason of the fact that her cargo had been taken on board in and she had sailed from a port of the United States prior to May 21st, 1898.

5th. For that the court omitted and refused to hold that the vessel was privileged and exempt from condemnation by reason of *of* the fact that she was in a port or place of the United States on April 26th, 1898, and was not within the classes of vessels excepted from the privileges accorded by the fourth article of the proclamation.

6th. For that the court omitted and refused to allow further proofs of the matters set up in the test affidavit and supplementaty test affidavit.

(S'd) CONVERS & KIRLIN,
(S'd) G. BOWNE PATTERSON,
Proctors for Appellant.

(Endorsed:) Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(*Bond.*)

United States District Court, Southern District of Florida.

THE UNITED STATES OF AMERICA
against
THE PANAMA.

20

Know all men by these presents that we, Manuel Quevedo, principal, and The American Surety Company, surety, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid to the said United States of America; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 28th day of May, 1898.

Whereas lately, at a session of this court, in the cause of prize pending therein, wherein The United States is libellant against the steamship Panama and her cargo and the said Manuel Quevedo is claimant of the steamship, a final decree was rendered in favor of said libellant, and the said claimant having fil*ing* his appeal papers and having obtained an order granting his appeal to the Supreme Court of the United States:

Now the conditions of the above obligation is such that if the said Manuel Quevedo shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his appeal good, then the above obligation to be void; otherwise to remain in full force and effect.

(S'd) M'L QUEVEDO.
(S'd) THE AMERICAN SURETY COMPANY OF NEW YORK,
By GEO. W. ALLEN, *Att'y-in-fact.*

Taken and acknowledged before—
(S'd) JULIUS OTTO,
U. S. Commissioner.

May 28th, 1898.

Approved:
(S'd) JAMES W. LOCKE, *Judge.*

(Endorsed:) Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

21 (*Application for Guns, &c.*)

NAVAL BASE, U. S. FLAGSHIP SUWANEE.
KEY WEST, FLA., *May 28th*, 1898.

SIR: 1st. I request that you will allow Lieutenant C. W. Jungen, U. S. N., to take the two 14-pounder guns, with the ammunition, and Lieutenant John Hood, U. S. N., the Maxim gun and ammunition, from the S. S. Panama.

2d. I have appointed officers to appraise these guns and the ammunition.

Very respectfully,
(S'd) GEO. C. REMEY,
Commodore Commanding.

J. W. Locke, Esq., judge U. S. district court.

(Endorsed:) Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(*Recommendation of Prize Commissioners.*)

In the District Court of the United States, Southern District of Florida. In Admiralty.

To the Hon. James W. Locke, judge of said court:

The undersigned, prize commissioners of this honorable court, would respectfully show unto your honor that—

Agreeably to the request of Com. George C. Remey, U. S. N., commanding naval base, we recommend that all the mounted
22 guns of the prize steamer Panama and ammunition for the same be turned over to such officer as he may designate, for

the use of the United States Navy Department, as provided by sec. #4624, U. S. R. S.

(S'd) J. OTTO,
(S'd) J. M. PHIPPS,
(S'd) J. K. WINN, *U. S. N.*,
Prize Commissioners.

Upon reading the foregoing application from George C. Remey, commodore commanding, and the recommendation of the prize commissioners, it is ordered that all the mounted guns and ammunition for the same which belong to the prize steamer Panama be duly appraised and delivered to the said George C. Remey, U. S. N., commodore commanding, for the use of the Navy Department, and that N. R. Usher, U. S. N., and J. D. Blich, U. S. N., be, and that they are hereby, appointed to appraise said property and report without delay.

Key West, Fla., May 28th, 1898.

(S'd) JAMES W. LOCKE, *Judge.*

(Endorsed:) Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(*Order to Take the S. S. Panama and Cargo to New York for Sale.*)

23 District Court of the United States, Southern District of Florida.

THE UNITED STATES
vs.
THE SPANISH STEAMSHIP PANAMA & CARGO. } Prize.

Whereas said case has been fully heard and a decree of condemnation and forfeiture has been made and entered against said steamship and a portion of said cargo;

And whereas the said steamship and cargo cannot be satisfactorily sold in this port, but the interests of all parties demand that she should be taken to some other district for sale;

And whereas the large number of passengers and crew on board said vessel who cannot be safely or economically disposed of at this place demands that she should be taken as soon as possible;

And whereas the presence here of a large number of other prizes and cargoes which have been condemned and ordered sold requires and demands the presence of the marshal of the district, and it is impracticable in the present emergency to procure the services of a suitable and satisfactory person to act as special deputy to take charge of and superintend the transfer of said steamer to another district:

It is hereby ordered that said steamer Panama be taken and transferred from this district to the district and port of New York for unloading and sale of such cargo as has not been ordered released and restored.

That she proceed to said port in charge of a prize crew from the

U. S. S. S. Cincinnati and under convoy of such ship, in com-
24 mand of Commander Colby M. Chester, U. S. N., command-
ing such charge and convoy, being ordered and directed by favor of Commodore George C. Remey, commodore commanding station.

And it is further ordered that Commander J. K. Winn, U. S. N., retired, prize commissioner of this district, be appointed and authorized in behalf of the captors and all parties in interest to proceed without delay to the port of New York via Washington; that he shall endeavor at Washington to make all arrangements with the proper departments of the Government for the receipt and disposal of all persons on said steamship immediately upon her arrival at the port of New York, and upon his arrival at New York superintend and supervise all arrangements for the consignment of said vessel and cargo to the auctioneer appointed by the honorable Secretary of the Navy to make and supervise the sales of prize property at the port of New York, and that he shall arrange, superintend, and supervise, by and with the assistance of said auctioneer, all such matters and things as shall in all and any way protect the interests of the captors and all others.

And it is further ordered that all necessary personal expenses so incurred by said Prize Commissioner Winn, when satisfactorily proven and allowed by this court, shall be taxed against and paid from the proceeds of said property in the final decree of distribution.

Key West, Fla., May 30th, 1898.

(S'd) JAMES W. LOCKE,
U. S. District Judge.

So much of the foregoing order as relates to the performance of
the duties of the U. S. marshal by Prize Commissioner Winn
25 and the reason therefor is approved and certified to be correct, and said prize commissioner, J. K. Winn, is hereby authorized and empowered by me to perform all the duties of marshal in said matters, namely, care, custody, and protection of said prize property, as fully as if he were appo-nted as special deputy for that purpose.

Key West, Fla., May 30th, 1898.

(S'd) JOHN F. HORR,
U. S. Marshal, Southern District of Florida.

(Endorsed:) Filed May 30th, 1898. (S'd) E. O. Locke, clerk.

(*Decree Restoring Cargo to Carlos Booth & Co.*)

District Court of the United States, Southern District of Florida.

THE UNITED STATES
vs.
THE STEAMSHIP PANAMA. } Prize.

In the matter of the claim of Carlos Booth & Co. for certain property shipped by said steamer Panama from New York for certain

parties in the city of Mexico, to be taken by said steamship to the port of Vera Cruz, it appearing from the further proof that said property is neutral property and not subject to condemnation and forfeiture, it is ordered that all such property as is described in said claim be declared neutral property and the same be restored and delivered to claimants.

26 Jacksonville, Fla., June 9th, 1898.

(S'd) JAMES W. LOCKE, *Judge.*

(Endorsed:) Filed June 9th, 1898. (S'd) E. O. Locke, clerk.

(*Order Extending Time to File Record.*)

In the United States District Court, Southern District of Florida.

UNITED STATES OF AMERICA
vs.
THE STEAMER PANAMA AND HER CARGO. } Prize.

This court having heretofore entered a final decree in the above-entitled cause condemning the said steamer and certain of her cargo, it is now, upon the underwritten consent of the United States attorney for the southern district of Florida and motion of J. Parker Kirlin, proctor for the claimant of said steamer and claimants of her cargo, ordered that the time of the claimants of the said steamer and her cargo to file a record on appeal herein and to perfect their said appeals be, and hereby is, extended for thirty days from June 25th, 1898.

(S'd) JAMES W. LOCKE, *Judge.*

I hereby consent to the entry of the foregoing order.

(S'd) J. N. STRIPLING,
U. S. Attorney.

Endorsed: Filed June 24th, 1898. (S'd) E. O. Locke, clerk.

27 District Court of the United States, Southern District of Florida.

THE UNITED STATES OF AMERICA
against
THE STEAMER PANAMA AND HER CARGO. }

An appeal having been allowed by the court herein from the final decree in the above-entitled cause condemning the above-named steamer and her cargo—

Now, upon the underwritten consent of the United States attorney for the southern district of Florida and the motion of Wilhelmus Mynderse, proctor for the claimants of said steamer and her cargo, it is hereby ordered that the time of the claimants and each of them to file the record on appeal be, and hereby is, extended to Sept. 1st, — days from ——, 1898.

(S'd) JAMES W. LOCKE, *Judge.*

I hereby consent to the entry of the foregoing order.

(S'd) J. N. STRIPLING,
U. S. Attorney.

28 *Standing Interrogatories*

Established by the district court of the United States for the southern district of Florida to be administered in prize causes in said court to all persons who may be produced as witnesses to be examined *in preparatorio.*

1st interrogate. What is your name, where were you born, and where have you lived for the last seven years? Where do you now live, and how long have you lived in that place? To what prince or State, or to whom are you, or have you ever been, a subject? Are you a married man, and if married, where do your wife and family reside?

2d interrogate. Were you present at the time of taking and seizing the ship, or her lading, or any of the goods or merchandises concerning which you are now examined? Had the ship concerning which you are now examined any commission; what, and from whom?

3d interrogate. In what place, latitude or part, and when, was the said ship and goods concerning which you are now examined, taken and seized? Upon what pretence, and for what reasons were they seized? Into what port were they carried, and under what colors did the said ship sail? What other colors had you on board, and for what reason had you such other colors? Was any resistance made, at the time when the said ship was taken? and if yea, how many guns were fired? and by whom? and by what ship or ships were you taken? Was the ship or vessel by which you were captured a ship of war, or a vessel acting without any commission, as you believe? Were any other and what ships in sight, at the time of the capture?

4th interrogate. What is the name of the master or commander of the ship or vessel taken? How long have you known the said master, and who appointed him to the command of said vessel? Where did said commander take possession of her, at what time, and what was the name of the person who delivered the possession to the said master? Where doth he live? Where is the said master's fixed place of abode, and where doth he generally reside? How long has he lived there, where was he born, and of whom is he now a subject? Is he married? If yea, where does his wife and family reside?

5th interrogate. Of what burden is the vessel which has been taken? What was the number of her mariners, and of what country were the said seamen and mariners? Did they all come on board at the same port, or at different ports, and who shipped or hired them, and when and where?

6th interrogate. Had you, or any of the officers or mariners belonging to the ship or vessel, concerning which you are now examined, any, and what, part, share or interest in the said vessel or her

lading? If yea, set forth who and what goods or interest you or they have? Did you belong to the said vessel, at the time she was seized and taken? In what capacity did you belong to her? How long have you known her? When and where did you first see her, and where was she built?

7th interrogate. What is the name of the vessel? How long has she been so called? Do you know of any other name or names, and what are they, by which she has heretofore been called? Had she any passport or sea chart on board, and from whom? To what ports and places did she sail, during her said voyage, before she was taken? Where did her last voyage begin, and where was the said voyage to have ended? From what port, and at what time, particularly from the last clearing port, did the said ship sail, previously to the capture? Set forth all the ports to which she has sailed, and at which she has touched and traded, during her whole voyage, out and home.

8th interrogate. What lading did the said vessel carry, at the time of her first setting sail on her last voyage, and what sort of lading and goods had she on board, at the time she was taken? When was the same put on board? Set forth the different species of lading, and the quantity of each sort. Has any part of the cargo of said vessel been unladen, since the commencement of her original voyage? If so, at what ports or places was it unladen? State the articles which were unladen.

9th interrogate. Who were the owners of the vessel, at the time when she was seized? How do you know that they were owners at that time? Of what nation or country are such owners by birth? Where do they reside, and where do their wives and families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? To whom are they subject? How long have the present owners been in possession? and of whom did they purchase?

10th interrogate. Was any bill of sale made, and by whom, to the aforesaid owners of said vessel? and if any such were made, in what month and year, and where, and in the presence of what witnesses? Was any, and what, engagement entered into concerning the purchase, further than appears on the bill of sale? If yea, was it verbal or in writing? Where did you last see it, and what has become of it?

11th interrogate. Was the said lading put on board at one port and at one time, or at several ports and at several times, and at what ports, by name? Set forth what quantities of each sort of goods were shipped at each port.

12th interrogate. What are the names of the respective laders or owners, or consignees of said goods? What countrymen are they? Where do they now live and carry on their business? How long have they resided there? Where did they reside before, to the best of your knowledge? And where were the said goods to be delivered, and for whose real account, risk or benefit? Have any one of the said consignees or shippers, any and what interest in the said goods? If yea, whereon do you found your belief that they

have such interest? Do you verily believe, that at the time of the lading the cargo and at the present time, and also if said goods shall be restored and unladen at the destined port, the goods did, do, and will belong to the same persons, and to none others?

29 13th interrogate. How many bills of lading were signed for the goods seized on board the said ship? Were any of those bills of lading false or colorable, or were any bills of lading signed, which were different in any respect from those which were on board the ship at the time she was taken? What were the contents of such other bills of lading, and what became of them?

14th interrogate. Are there in the United States of America any bills of lading, invoices, letters or instruments relative to the ship and goods, concerning which you are now examined? If yea, set forth where they are, and in whose possession, and what is the purport thereof, and when they were brought or sent to the United States.

15th interrogate. Was there any charter-party signed for the voyage, in which the ship, concerning which you are now examined, was seized and taken? What became thereof? When, where, and between whom, was such charter-party made? What were the contents of it?

16th interrogate. What papers, bills of lading, letters or other writings, were on board the ship, at the time she took her departure from the last clearing port, before her being taken as prize? Were any of them burnt, torn, thrown overboard, destroyed or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

17th interrogate. Has the ship, concerning which you are now examined, been, at any time, and when, seized as a prize, and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned?

18th interrogate. Have you sustained any loss by the seizing and taking the ship, concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

19th interrogate. Is the said ship, or goods, or any, and what part, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

20th interrogate. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any other person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

21st interrogate. Let each witness be interrogated of the growth, produce, and manufacture of what country and place was the lading

of the ship or vessel, concerning which you are now examined, or any part thereof.

22d interrogate. Whether all the said cargo, or any, and what part thereof, was taken from the shore or quay, or removed or transhipped from one boat, barque, vessel or ship, to another? From what, and to what shore, quay, boat, barque, vessel or ship, and when and where, was the same so done?

23d interrogate. Are there, in any other country, and where, or on board any and what ship or ships, vessel or vessels, other than the ship and vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers or documents, relative to the said ship, or vessel and cargo, and of what nature are such bills of lading, invoices, letters, instruments, papers or documents, and what are the contents? In whose possession are they, and do they differ from any of the papers on board, and in what particular do they differ?

24th interrogate. Were any papers delivered out of the said ship or vessel, and carried away in any manner whatsoever? And when, and by whom, and to whom, and in whose custody, possession or power, do you believe the same now are?

25th interrogate. Was bulk broken during the voyage in which you were taken, or since the capture, of the said ship? And when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

26th interrogate. Were any passengers on board the aforesaid ship? Were any of them secreted, at the time of the capture? Who were the passengers, by name? Of what nation, rank, profession or occupation? Had they any commission? For what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any, and what property or concern, or authority, directly or indirectly, regarding the ship and cargo? Were there any officers, soldiers or mariners secreted on board and for what reason were they secreted? Were any of the citizens of the United States on board, or secreted or confined, at the time of the capture? How long, and why?

27th interrogate. Were, and are, all the passports, sea briefs, charter-parties, bills of sale, invoices and papers, which were found on board, entirely true and fair? Or are any of them false or colorable? Do you know of any matter or circumstances to affect their credit? By whom were the passports or sea briefs obtained, and from whom? Were they obtained for this ship only? And upon the oath, or affirmation, of the persons therein described, or were they delivered to, or on behalf of the person or persons who appear to have been sworn, or to have affirmed thereto, without their having ever, in fact, made any such oath or affirmation? How long time were they to last? Was any duty or fee payable, and paid, for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often? And has the duty or fee been paid for such renewal?

Was the ship in a port in the country where the passports and sea briefs were granted? And if not, where was the ship at the time? Had any person on board any let-pass, or letters of safe conduct? If yea, from whom and for what business? Had the said ship any license or passport from any foreign power or authority during the voyage? If so, state from whom been obtained, and for what purpose and use.

28th interrogate. Have you written or signed any letters or papers concerning the ship and her cargo, other than those found on board and delivered to the captors? If yea, what was their purport, to whom were they written and sent, and what has become of them?

29th interrogate. Towards what port or place was the ship steering her course, at the time of her being first pursued and taken? Was her course altered, upon the appearance of the vessel by which she was taken? Was her course, at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship's papers? Was the ship, before or at the time of her capture, sailing beyond, or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered, at any, and what time, and to what other port or place, and for what reason?

30th interrogate. By whom, and to whom, hath the said ship been sold or transferred, and how often? At what time, and at what place, and for what sum or consideration, hath such sum or consideration been paid or satisfied? Was the sum paid, or to be paid, a fair and true equivalent? Or what security or securities have been given for the payment of the same, and by whom, and where do they live now? Do you know, or believe, in your conscience, such sale or transfer has been truly made, and not for the purposes of covering or concealing the real property? Do you verily believe, that if the ship should be restored, she will belong to the persons now asserted to be the owners, and to none others?

31st interrogate. What guns were mounted on board the ship, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other, and what, arms and ammunition, and when and where — they put on board? And by whom, or by what authority, or for what purpose or destination, and on whose account were they put on board?

32d interrogate. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the ship and cargo concerning which you are now examined at the time of the capture?

31 UNITED STATES OF AMERICA:

In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMER PANAMA. } Prize.

Deposition of Ramon Burgas, a witness produced, sworn, and examined *in preparatorio* on the 11th day of May, A. D. 1898, at the U. S. court-house, Key West, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Panama."

1. To the 1st interrogatory deponent answers:

My name is Ramon Burgas. I was born in Barcelona, Spain, and have lived there for the last seven years. I have lived there all my life. I am a subject of Spain. I am not a married man.

2. To the 2nd interrogatory deponent answers:

I was in my office on board the ship when she was captured. She has a commission as a royal mail ship from the Spanish government.

3. To the 3rd interrogatory deponent answers:

32 I do not know where the ship was when she was captured. We were captured on a pretense of the war which existed between Spain and the United States.

She sailed under the Spanish flag, and was brought into the port of Key West. We had no other colors on board.

There was no resistance. We were captured by the U. S. S. "Mangrove." She was a ship of war. At the time of the capture there were two war ships in distance.

I could not see the body of the ships, but could see their towers. Afterwards we steamed up to the war ships with the Mangrove and found that the ships were the Indiana and the Wilmington.

4. To the 4th interrogatory deponent answers:

The master of the captured ship is Manuel Quevedo. I have known him since December, 1897. I do not know who appointed him, for when I entered the ship he was already there as captain. I do not know where or when he took possession of the ship or who delivered the possession to him.

The master lives in Cadiz, which is his fixed place of abode. I do not know how long he has lived there or where he was born, but I believe he is from the Canary islands, and that he is a subject of Spain. He is married. His family lives in Cadiz.

5. To the 5th interrogatory deponent answers:

The vessel is 1,432 registered tons. She had 71 mariners,
33 including the captain, who are all Spanish. They all came on board at Havana, Cuba. They were shipped by the agents of the company at Havana at different times.

6. To the 6th interrogatory deponent answers:

Neither myself nor any of the officers or the mariners had any interest in the vessel or the cargo. I belonged to the vessel in the capacity of supercargo at the time she was captured. I have known the ship for about four years. I first saw her in Havana. She was built in England.

7. To the 7th interrogatory deponent answers:

The name of the vessel is the Panama. She has been called the "Panama" ever since I knew her. She had no passport or sea chart that I know of. On the voyage before we were captured the vessel sailed from Havana to New York. The last voyage began in Havana and was to have ended in Vera Cruz, round trip by the way of New York. The vessel last sailed from New York on the 20th day of April, A. D. 1898, at 1.30 p. m. On our last voyage we started from Havana for New York. After leaving New York for Havana we were captured.

8. To the 8th interrogatory deponent answers:

At the time of first setting sail we had on board a cargo of sugar and tobacco and old metal. When we were captured we had on board a cargo—general—which was taken on at New York.
34 This cargo was taken on board from the 18th to the 20th of April, 1898. The manifest will set forth the quantity of each sort; I do not now remember. The original cargo was unladen at New York. No part of the cargo has been unladen, since the commencement of the voyage, taken on at New York. A portion was taken out by the U. S. marshal, under orders from the court. Potatoes, eggs, and lard were taken out to be sold as perishable cargo.

9. To the 9th interrogatory deponent answers:

The owners at the time of the capture were the Spanish Trans Atlantic Company. I know they were the owners because I have received no notice to the contrary and all the orders are from them. They are Spaniards; they reside at Barcelona; they are subjects of Spain. I do not know how long they have been in pos-ession or from whom they purchased.

10. To the 10th interrogatory deponent answers:

I do not know anything about any bills of sale.

11. To the 11th interrogatory deponent answers:

The lading was placed on board at one time at the port of New York.

12. To the 12th interrogatory deponent answers:

I do not know the laders or consignees. The goods were to
35 be delivered at Havana, Progresso, and Vera Cruz, at the risk of the shippers. I believe that if the said cargo had been delivered at the port of destination that the said cargo would have belonged to the same persons and to none others.

13. To the 13th interrogatory deponent answers:

I do not know how many bills of lading were signed for these goods; none of them were false.

14. To the 14th interrogatory deponent answers:

At the agents' at New York I believe that there are copies of all bills of lading relative to the cargo.

15. To the 15th interrogatory deponent answers:

There was no charter-party.

16. To the 16th interrogatory deponent answers:

All the papers of every description that were on the ship were delivered to the prize master at the time we were captured. None of them were burnt, torn, thrown overboard, cancelled, or concealed.

17. To the 17th interrogatory deponent answers;

The ship has never before been captured and condemned as a prize before this time.

18. To the 18th interrogatory deponent answers:

I have sustained no loss by the taking and capture of this ship.

36 I have not received any promise of indemnity or indemnity for any loss which I have sustained or may sustain.

19. To the 19th interrogatory deponent answers:

I do not know whether or not the said ship or cargo is insured.

20. To the 20th interrogatory deponent answers:

I believe that the cargo would upon its having been unladen at its port of destination *would* have become the property of the consignees and *to* none others.

21. To the 21st interrogatory deponent answers:

The cargo was produced and grown in the United States.

22. To the 22nd interrogatory deponent answers:

All of the cargo was taken from the wharf at the port of New York.

23. To the 23rd interrogatory deponent answers:

Bills of lading I believe to be in the U. S., copies of the original found on board the ship. They do not differ from those found on board the ship.

24. To the 24th interrogatory deponent answers:

The only papers delivered out of the ship were delivered to the prize officer. I believe they are now in possession of the prize commission.

37 25. To the 25th interrogatory deponent answers:

The bulk of the cargo was not broken before the capture, but it has been broken in the port of Key West by the U. S. marshal.

26. To the 26th interrogatory deponent answers:

There were passengers on board. There were no passengers secreted. I do not know them by name. They are Spaniards. I do not know their rank, profession, or occupation. I do not know if any of them had a commission. They were taken on board at New York. Twenty-eight were for Havana and one for Vera Cruz. None of the passengers were concerned in the ship. There were no

officers, mariners, or soldiers secreted on board. There were no citizens of the United States on board.

27. To the 27th interrogatory deponent answers:

All the papers found on the boat, as far as I know, are true and correct. I know of no matter or thing which would affect their credit. The papers were obtained for this ship alone. The ship had only a license from the custom-house at New York and the Spanish papers.

28. To the 28th interrogatory deponent answers:

I have written no letters or papers since I was captured.

29. To the 29th interrogatory deponent answers:

The ship was steering her course towards Havana when
38 she was captured. Her course was not altered upon the appearance of the capturing ship. Her course was always directed toward Havana. She was not sailing wide or beyond her port of destination. Her course was altered after capture and she was brought into the port of Key West, where she now is. We were 25 miles from Havana when we were captured.

30. To the 30th interrogatory deponent answers:

I know nothing about any sales or transfers of this ship. I believe that if the ship should be restored she will belong to the persons now asserted to be the owners and to none others.

31. To the 31st interrogatory deponent answers:

Two breech-loading 9 centimeters Hontorio guns, one Maxim rapid-fire gun, and two saluting guns were mounted on deck; revolvers, guns, swords, and ammunition for the same; sixty rounds of ammunition for the cannon. She was armed in accordance with the contract with the Spanish government. All mail ships must be armed.

32. To the 32nd interrogatory deponent answers:

I have already stated in my answers in the foregoing all that I know or believe concerning the true property and destination of the ship and cargo.

(S'd) RAMON BURGAS.

Sworn to and subscribed before me May 11th, 1898.

(S'd) J. K. WINN,
Prize Commissioner.

39 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
THE SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of Gaspar Thompson, a witness produced, sworn, and examined *in preparatorio* on the 12th day of May, A. D. 1898, at the U. S. court-house, Key West, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the Panama.

1. To the 1st interrogatory deponent answers:
My name is Gaspar Thompson. I was born at Cadiz, Spain. For the last seven years I have been going to sea. I claim Cadiz as my home. Since 1895 I have been a Spanish subject. Previous to that I was a subject of England. I am not married.

2. To the 2nd interrogatory deponent answers:
I was present at the time of the capture of the Panama. The ship is a regular Spanish mail steamer.

3. To the 3rd interrogatory deponent answers:
40 The ship was taken about twenty miles from Havana, Cuba, at about 15 minutes to 6 o'clock p. m. on the 25th day of April, A. D. 1898. We were captured on account of the war which existed between Spain and the United States. She was carried into the port of Key West. She flew the Spanish flag. I do not know that we had any other colors. We made no resistance at the time. We were captured by the U. S. S. Mangrove. The ship that captured us was a ship of war. I believe the U. S. S. "Indiana" and another ship were in sight. I was chief engineer of the "Panama," and my duties demanded my presence below, so I am not prepared to state positively as to the time we sighted the other ships.

4. To the 4th interrogatory deponent answers:
The captain's name id Manuel Quevedo. I have known him for 13 years, and he was appointed to the command of the "Panama" by the Spanish Trans Atlantic Company. She was delivered to the captain in Havana about 18 months ago by Capt. Angel Cascaro. The captain of the ship lives in Cadiz. His fixed place of residence is Cadiz, and he usually resides on board his boat. I do not know how long he has lived at Cadiz, but he was born in the Canary islands and is a subject of Spain. He is a married man. His wife and family live in Cadiz.

5. To the 5th interrogatory deponent answers:
I do not know the tonnage of the vessel. The ship has
41 all told seventy-one mariners, all Spaniards. They all came on board at Havana at different times. The agent of the company at Havana hired the mariners, except the officers.

6. To the 6th interrogatory deponent answers:

None of the officers or mariners had any interest in the vessel or cargo. I belonged to the "Panama" at the time she was taken in the capacity of chief engineer. I have know- the vessel for 18 years. I first saw her in Santandere, in 1882. She was built in Glasgow.

7. To the 7th interrogatory deponent answers:

The name of the vessel is the Panama. She has been called by that name ever since I knew her. I do not know if she has a passport or sea chart. We started out from New York on the voyage before we were taken and intended to touch at Havana, Vera Cruz, and Progresso, thence back to New York, touching at the same ports. We were captured on our way out of New York. We cleared from New York at about 2 p. m. on the 2–th day of April, 1898. We were captured on the 25th day of April, 1898, while we were bound for Havana.

8. To the 8th interrogatory deponent answers:

I am chief engineer of the boat and do not keep account of the cargo. I do not know what she was loaded with. Some of the cargo was unloaded at Key West. I do not know the articles which were unladen.

42 9. To the 9th interrogatory deponent answers:

The Spanish Trans Atlantic Company, represented by the Marquis Comillas. I am employed by them and have no notice to the contrary that they do not own the vessel. They are all Spanish subjects, to the best of my knowledge. I cannot tell where they all live or where their families live. They are subjects of the King of Spain. The present owners have been in possession of said vessel since the year 1886. They purchased the said vessel from the Marquis of Campos Company.

10. To the 10th interrogatory deponent answers:

I do not know anything about any bills of sale or transfers except as before stated.

11. To the 11th interrogatory deponent answers:

The cargo was put on board at one port at one time, at New York.

12. To the 12th interrogatory deponent answers:

I do not know anything about the laders or consignees. I do not know their names or their place of abode or their nationality.

13. To the 13th interrogatory deponent answers:

I do not know anything about any bills of lading.

14. To the 14th interrogatory deponent answers:

I do not know anything about any bills of lading.

43 15. To the 15th interrogatory deponent answers:

I do not know anything about a charter-party being signed for that voyage.

16. To the 16th interrogatory deponent answers:

I do not know what papers, letters, or writings were on board the ship at the time we set sail. I do not know, of my own knowledge or otherwise, that any of them were destroyed, burnt, or concealed.

17. To the 17th interrogatory deponent answers:

Previous to this seizure, the ship has never been seized or condemned as a prize.

18. To the 18th interrogatory deponent answers:

If the ship is not returned, I will lose my wages and my situation. I have not received any indemnity or promise of indemnity for any loss which I have sustained or may sustain by reason of the capture of this ship.

19. To the 19th interrogatory deponent answers:

I do not know whether or not the cargo is insured, but the ship is insured in Lloyds.

20. To the 20th interrogatory deponent answers:

I do not know anything about the ownership of the cargo.

21. To the 21st interrogatory deponent answers:

44 I do not know where the cargo was produced or where it was grown, but I believe they came from the United States.

22. To the 22nd interrogatory deponent answers:

The cargo was taken from the wharf in New York about the 18th day of April to the 20th day of April, 1898.

23. To the 23rd interrogatory deponent answers:

I do not know anything about any bills of lading or passports relative to the cargo and ship.

24. To the 24th interrogatory deponent answers:

After the capture of the ship some papers were turned over to the prize master by the captain. I believe they are now in pos-ession of the prize commissioners.

25. To the 25th interrogatory deponent answers:

None of the cargo was taken out on the voyage, but since we arrived in Key West some of the cargo was taken out by the U. S. marshal within the last week.

26. To the 26th interrogatory deponent answers:

There were passengers on the ship. None of them were secreted at the time of capture. I do not know their names. They are all Spaniards except two; one is a Frenchman and one is a Mexican. I do not know their profession or occupation. I do not know if any have a commission. They were taken on board at New York on the 20th day of April, 1898. They were going to Havana and Vera Cruz; business unknown to me.

45 None of the passengers had any authority over the ship or cargo, as far as I know of. There were not any officers, soldiers, or mariners on board the ship, as far as I know. There were no citizens of the United States on board or secreted or confined, as far as I know.

27. To the 27th interrogatory deponent answers:

I do not know anything about any of the papers of or concerning the ship and cargo.

28. To the 28th interrogatory deponent answers:

I have not written any letters or signed any papers relative to the ship or her cargo.

29. To the 29th interrogatory deponent answers:

The ship was steering towards the port of Havana at the time she was pursued and taken. I do not think the course was changed

at the appearance of the capturing ship. Her course, as far as I know, was at all times directed toward the port, as shown by the ship's papers. She was not at any time sailed beyond or wide of her port of destination, as far as I know. After her capture her course was altered, and she was brought into the port of Key West by the Mangrove.

30. To the 30th interrogatory deponent answers:

I do not know anything about any bill of sale or transfer of the ship, except as before stated. If the ship were released, I
46 believe she would belong to the persons now said to be the owners.

31. To the 31st interrogatory deponent answers:

There were two breech-loading Hontorio 9 centimeters guns and one Maxim rapid-firing gun; a number of rifles, cutlases, revolvers, and ammunition for the same. I do not know the exact number or the exact amount of ammunition. I think 38 or 40 charges for the big guns. This armament is required by the Spanish law for all mail steamers. I do not know if there were any other arms or ammunition on board.

32. To the 32nd interrogatory deponent answers:

I have already stated all that I know concerning the true property and destination of the ship and cargo concerning which I am now being examined.

(S'd) GASPAR THOMPSON.

Sworn to and subscribed before me May 12th, 1898.

(S'd) J. K. WINN,
Prize Commissioner.

47 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMER "PANAMA." } Prize.

Deposition of Manuel Quevedo, a witness produced, sworn, and examined *in preparatorio* on the 11th day of May, A. D. 1898, at the U. S. court-house, Key West, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Panama."

1. To the 1st interrogatory deponent answers:

My name is Manuel Quevedo. I was born in Las Palmas, Canary islands. I have lived during the last seven years in Santander and Cadiz, Spain; four years in Cadiz. I live there now. I am a subject of Alfonso XIII, King of Spain. I am a Spaniard. I am a married man and my family live at Cadiz, Spain.

2. To the 2nd interrogatory deponent answers:

I was present at the time of the capture of the Panama. The ship had a commission, a royal patent, from the Spanish government by the Queen of Spain.

48 3. To the 3rd interrogatory deponent answers:

The ship and cargo *was* taken about 25 miles from the Morro castle, Havana, Cuba, north latitude 23 21″, longitude 75 47′. The U. S. Mangrove steered towards us at 5.40 on the 25th of April, 1898; at 5.50 the first shot was fired by the Mangrove. After the first shot I stopped the ship. When the officer came on board he told me that the "Panama" was a prize, because Spain had declared war against the United States. We were carried into the port of Key West. The ship flew the Spanish flag. We made no resistance at the time of the capture. Two shots were fired by the "Mangrove." My ship was captured by the "Mangrove." The ship that captured my vessel I believe to be a war ship. There were two ships in sight at the time we were captured. Afterwards I was informed that one was the "Indiana" and one was the "Wilmington." I first saw the "M-ngrove;" this was at 5.30 p. m., and shortly afterwards I saw the towers of the other ship.

4. To the 4th interrogatory deponent answers:

The name of the master of the captured ship is Manuel Quevedo, myself. The Trans Atlantic Company gave me possession of said ship. I took command of her in Havana, the 28th day of Sept., 1896. The name of the person who delivered possession to me was Manuel Calvo, agent and vice-president of the company. He lives in Havana, Cuba.

49 5. To the 5th interrogatory deponent answers:

The tonnage of the vessel is over 1,300 tons. I do not remember the exact number. We had seventy-one mariners, including myself. They are all Spaniards. They were all shipped at Havana. The company hired them; at different times.

6. To the 6th interrogatory deponent answers:

Neither myself or any of the officers or mariners have any interest in the ship or cargo. I belong on board the vessel in the capacity of master. I have known the vessel about 15 years. I do not know where she was built. She was built in England, I believe.

7. To the 7th interrogatory deponent answers:

The vessel is named the "Panama." She has been called the "Panama" about 15 years. I do not know that she has ever been called by any other name. The ship has a collection of sea charts and a royal patent. The voyage of the ship usually commences at New York and ends at Vera Cruz. Before we were captured we had sailed from Havana to New York. We were on our way from New York to Havana when we were captured. We sailed from New York, which is the last place that we cleared from before we were captured.

8. To the 8th interrogatory deponent answers:

On our trip from Havana to New York on our last voyage we had on board a cargo of sugar and tobacco. On our voyage from

New York to Havana, when we were captured, we had on
50 board a general cargo. The same was put on board between the 18th day of April and 20th day of April, A. D. 1898. We had on board a general cargo. I cannot set forth the quantity of each sort. A part of the cargo was unladen at the port of Key West; nowhere else. A part of the cargo unladen at Key West were lard, eggs, potatoes, and onions.

9. To the 9th interrogatory deponent answers:

At the time the vessel was seized she was owned by the Spanish Trans Atlantic Company. I have no notice to the contrary that they are the owners now and at the time she was captured. If the ownership had been changed I would have been informed of the change. The owners by birth are Spaniards. They reside with their families at Madrid, Barcelona, and Cadiz. I do not know how long they have resided in said places. I do not know where they resided before. They are all subjects of Spain. The present owners of the "P-nama" *has* been in possession about 13 years. They purchased her from the Marquis de Campos.

10. To the 10th interrogatory deponent answers:

I do not know anything about a bills of sale being made for this vessel.

11. To the 11th interrogatory deponent answers:

All of the cargo was put on board at New York—from the dock at New York—between the 18th, 19th, and 20th days of April, A. D. 1898.

51 12. To the 12th interrogatory deponent answers:

I do not know the names of the shippers or consignees of the cargo. The manifest will show it. I do not know what country they belong to. The goods were to be delivered in Havana, Progresso, and Vera Cruz, and I do not know for whose account, risk, or benefit. I do not know who the cargo belongs to or anything about it. I believe that in case the cargo is released, and if the said cargo were to be delivered at the port of destination, that it would belong to the same persons who were the owners when the said cargo was placed on board and to none others.

13. To the 13th interrogatory deponent answers:

There were several bills of lading signed for each article on board the ship, but, as that is the duty of the agent, I do not know how many were signed. I do not think that any of the bills of lading were false.

14. To the 14th interrogatory deponent answers:

I do not know anything about any bills of lading being now in the U. S. of America.

15. To the 15th interrogatory deponent answers:

There was no charter-party for that voyage.

16. To the 16th interrogatory deponent answers:

All the papers on board of the said vessel at the time of
52 her capture were delivered to the prize master. None of the papers of the ship were burnt, torn, thrown overboard, or cancelled or concealed.

17. To the 17th interrogatory deponent answers:

I do not know whether or not the said vessel has ever before been captured and condemned as a *prize*.

18. To the 18th interrogatory deponent answers:

I have sustained no loss by the capture or detention of this vessel. I have received no indemnity, satisfaction, or promise of satisfaction for any loss which I have sustained or may sustain by this capture.

19. To the 19th interrogatory deponent answers:

The ship and cargo were insured. I do not know where they are insured.

20. To the 20th interrogatory deponent answers:

In case I had arrived at the port of destination, as shown by the ship's papers, I believe the cargo would have belonged to the consignees.

21. To the 21st interrogatory deponent answers:

I believe the cargo was produced and manufactured in the United States.

22. To the 22nd interrogatory deponent answers:

All of the cargo was removed from the shore at the docks
53 right on board my vessel, at New York, between the 18th day of April, 1898, and 20th day of April, 1898.

23. To the 23rd interrogatory deponent answers:

I know very little about the bills of lading. A copy of each was delivered on board my boat and I delivered them to the prize master. We sailed from the port of New York on the 20th day of April, at 1.30 p. m.

24. To the 24th interrogatory deponent answers:

All the papers and mail of the ship were delivered to the prize master; none was delivered to any one else.

25. To the 25th interrogatory deponent answers:

None of the cargo was broken during the voyage. A part has been broken by the U. S. marshal, under the order of the court, for the purpose of selling perishable cargo.

26. To the 26th interrogatory deponent answers:

There were passengers on board; none of them were secreted; I do not know what their names were. There were 29 passengers. There is one Frenchman and the balance are Spaniards. I do not know their rank or occupation. I do not know if any of them had commissions. They were taken on board at New York on 20th day of April, 1898. They were destined for Havana; one for Vera Cruz. I do not know what business they were on. None of the passengers had any con-
nection with the ship in manner, nor the cargo. There
54 were no soldiers, officers, mariners secreted on board. Some of the passengers may be soldiers or officers, but I do not know it to be so. There were no citizens of the United States on board or secreted or confined. I had two Spanish mariners belonging to my ship placed in irons previous to my capture. They have since been released by me.

27. To the 27th interrogatory deponent answers:

That to the best of my knowledge and belief all of the passports

and papers on board my ship are true and correct. None of them are false, and I do not know of anything that would affect their credit. The clearance papers were obtained from the collector of customs at New York. They were obtained for this ship only, and were upon oath from myself they were obtained. The ship had a license from the American Government (clearance papers); also a royal patent from Spain.

28. To the 28th interrogatory deponent answers:

I have neither written or signed any letters or papers since I was captured. I did send a telegram to the owners at Havana and to New York informing them that I had been captured. I wrote two letters to my family and delivered them to the U. S. marshal to be mailed.

29. To the 29th interrogatory deponent answers:

We were steering our course toward Havana when we were first captured. Her course was not altered upon the appearance of the capturing vessel. Our course was always direct for Havana. The ship was not sailing wide or beyond her port of destination
55 at any time previous to her capture. Her course was after capture shaped for Key West on the 23d day of April, 1898.

30. To the 30th interrogatory deponent answers:

I know nothing about any sale or transfer of the ship. If the ship should be restored I believe she would belong to the persons now said to be the owners and to none others.

31. To the 31st interrogatory deponent answers:

There were mounted on board the ship at the time of her capture five guns. There were also guns, bayonets, and swords. She was armed because in the contract which the government had with the company it required that all official mail ships shall have arms and ammunition. She was armed on account of article 26, page 11, of extract of contract of service of marine postal for the use of the captains of mail steamers. Two of them were breech-loaders, 9 centimeters, mounted, one on each side of the ship, with 30 rounds of shot for each; one Maxim gun mounted on the bridge, with ammunition; two signal guns, one on each side of the pilot-house, with ammunition; about 30 or 40 swords; about 20 Remington rifles, with ammunition, and 10 Mauser rifles, with ammunition. The arms have been on board for some time. The cannon were put there about three years ago. The Mauser rifles were put on board about one year ago, in Havana, by the company, in order to have the crew armed. On account of the company, these arms and ammunition were placed on board.

56 32. To the 32nd interrogatory deponent answers:

I have already in my answers to the previous interrogatories answered fully all that I know concerning the true property of the ship, cargo, and its destination.

(S'd) M. QUEVEDO.

Sworn to and subscribed before me May 11th, 1898.

(S'd) J. OTTO,
Prize Commissioner.

In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of Gabriel Reyna, a witness produced, sworn, and examined *in preparatorio* on the 13th day of May, A. D. 1898, at the court-house, Key West, in said district, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Panama."

Deponent says as follows:

My name is Gabriel Reyna. I was a passenger of the 3d class on board the Spanish steamer "Panama" at the time she was captured. I have resided in New York for five years. My home is in San Juan de Porto Rico. I am a Spanish subject. On the night of the 24th day of April, A. D. 1898, the captain of said ship
57 gave orders that all lights on board said vessel should be put out. All lights, including the side lights, were put out, and no lights of any description were allowed on board the ship. During the voyage a man was placed in the topmast with a glass, and was ordered to report whenever a vessel was in sight. When a vessel arrived in sight he would report to the captain of the "Panama," who would scan said vessel.

I heard from some of the passengers that there was among the cargo arms and ammunition in the hold. I was told that the captain had arms and ammunition thrown overboard before capture.

(S'd) GABRIEL REYNA.

Sworn to and subscribed before me May 13th, 1898.

(S'd) J. OTTO,
Prize Commissioner.

58 (*Judge's Opinion.*)

THE UNITED STATES
vs.
THE SPANISH STEAMSHIP "BUENA VENTURA," "PANAMA," "Catalina," "Miguel Jover," "Pedro," and "Guido" and Cargoes. } Prize.

The questions involved in these several cases, being of the same character, have been considered together.

Of these vessels the Buena Ventura cleared from the port of Scranton, Miss., on the 16th of April, 1898, and sailed with a cargo of lumber for Rotterdam the 19th of that month, and was captured in the straits of Florida, between Key West and Cuba, on the 22nd by the U. S. S. Nashville; the Panama cleared and sailedf from New York for Havana with an assorted cargo on the 20th of the same month, and was captured on the 25th by the U. S. S.

Mangrove, while approaching that port; the Catalina and the Miguel Jover, laden with cotton and staves, cleared from New Orleans on the 21st of the same month, and sailed the evening of the same day for Barcelona and Genoa; the Catalina was captured by the U. S. S. Detroit and the Miguel Jover by the U. S. S. Helena, both on the 24th; the Pedro, which had sailed from Antwerp some time before, had been into Havana, had cleared for Santiago, Cuba, and was captured on the 22nd of the same month, about twelve miles from the port of Havana, by the U. S. S. New York, and the Guido from Liverpool, bound for Havana by way of Santander, Cuwana, and La Puebla, was captured on the 27th by the U. S. S. Terror.

They are all Spanish vessels, sailing under the Spanish flag, with royal patents, officered and manned by Spaniards, and with the exception of the Pedro and Guido no question has been
59 raised as to their being enemy's property.

They were all merchant vessels, engaged in regular lines of commerce, and this, *is* the hardship and injustice of the captures before a declaration of war, has been strenuously urged in argument as contrary to the humane policy of our Government, in addition to the provisions of the President's proclamation.

The principles of law of prize have been so often and so distinctly declared by the highest courts of all civilized countries that they need no extended review here. The law of prize is a law of war, of might, and of force, which is to be exercised at the order and behest of the Executive, and not upon the principles of policy or equity; and while prize courts, where questions of doubt arise, yield as far as possible to the claims of humanity and respect for personal rights, yet they cannot be controlled by such considerations.

The former rule of the law of prize was that the belligerent had a right to capture the property of the opposing belligerent or antagonist under any circumstances, and to injure him in any way by depriving him of his property.

That was the original practice, but it has been restricted by gradual advance of civilization until, by the prize law of today, as accepted, the captor has a right, in the absence of any declaration of exemption by the political power, to capture, wherever and whenever found afloat, anything which belongs to or is the property of the enemy.

Whenever it is claimed that there is an exemption made by proclamation or by ordinance, the burden of proof is upon the claimant to show that the particular case comes within the exemption, and although such proclamation or ordinance is to be lib-
60 erally construed in behalf of the claimants, there must be found therein sufficient language to justify the court in finding that the intention was to exempt from seizure the class of property under investigation. The language to justify an exemption must be found. It cannot be presumed from international history or policy nor from the principles of justice, generosity, or humanity.

The important questions in the cases now pending arise upon

the construction of the proclamation of the President of the United States of April 26th, 1898.

And that, *is* construed by the claimants of the several steamships, each one of them comes within some provision of this proclamation which exempts it from the liability of capture and condemnation, but as construed by the attorneys for the captors not one of them is exempt.

The proclamation is as follows:

"By the President of the United States of America:

A Proclamation.

"Whereas, by an act of Congress approved April 25th, 1898, it is declared that war exists and that war has existed since the 21st of April, 1898, including said day, between the United States of America and the Kingdom of Spain; and

Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the declaration of Paris:

Now, therefore, I, William McKinley, President of the
61 United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim:

1. The neutral flag covers enemy's goods, with the exception of contraband of war.

2. Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag.

3. Blockades in order to be binding must be effective.

4. Spanish merchant vessels in any ports or places within the United States shall be allowed until May 21st, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, upon examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; provided, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy; or any coal (except such as may be necessary for their voyage) or any other article prohibited or contraband of war, or any dispatch of or to the Spanish government.

5. Any Spanish merchant vessel which, prior to April 21st, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo and afterwards forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

6. The right of search is to be exercised with strict regard for the

rights of neutrals, and the voyages of mail steamers are not
62 to be interfered with, except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington on the 26th day of April, in the year of our Lord one thousand eight hundred and ninety-
[SEAL.] eight, and of the Independence of the United States the one hundred and twenty-second.

WM. McKINLEY.

By the President:
ALVEY A. ADEE,
Acting Secretary of State."

Examining this proclamation in its several parts, we find, first, the simple declaration and announcement of a recognition of a condition of war since the 21st of April, 1898, as declared by the act of Congress of April 25th, 1898; second, a declaration of the desire that such war shall be conducted upon principles in harmony with the present views of nations and sanctioned by recent practice.

This being the declared intention of the Executive, it must be accepted to aid in construing the subsequent declarations of the proclamation.

The first point in which the Executive desires to continue the practice and be in harmony with the views of nations is that there shall be no privateering; the second, that a neutral flag shall cover the enemy's goods, with the exception of contraband of war, and that neutral goods not contraband of war shall not be liable to forfeiture under the enemy's flag. So far it is very clear that
63 the proclamation has followed the humane practice of all nations more recently established; but, reaching the fourth article of the proclamation, we find it absolutely necessary in these cases, in order to interpret and construe it according to the arguments of either the libellants or the defendants, to read into it some language determining the time at which Spanish merchant vessels should be "in ports or places within the United States" to give them the right of being allowed until May 21st, 1898, for lading their cargoes and departing. There is no expression of any element of time in this connection to aid in the construction, but upon this depends the cases of the Catalina and of the Miguel Jover, which cleared from New Orleans the evening of April 21st, 1898.

It is argued by the claimants that the intention of the proclamation was that the exemption should attach to all Spanish merchant vessels in harbor at the outbreak of the war, and that the words "at that date" or their equivalent should be — understood, while the counsel for the captors contends that there can be no retroactive effect of the proclamation, and the only word that could be — understood is "now."

Which of these views is in harmony with the present views of nations and sanctioned by their recent practice?

Formerly, at the outbreak of war, nations lost no time in seizing enemy's shipping found in their ports, although they had entered in good faith in time of peace; but modern usage condemns such a breach of national good faith, and recent practice has been to give certain days of grace to shipping found within enemies' ports at the outbreak of war. In the Crimean war, in 1854, Russian vessels were allowed six weeks to leave British ports. In 1870
64 thirty days were allowed German vessels in French ports, and French vessels in German ports were allowed six weeks to leave. In 1897 (the Greeco-Turkish war) fifteen days were allowed by each nation for the vessels of the opposite nation to clear with impunity. In each of these cases the immunity attached from the outbreak of the war.

Was it the intention of this proclamation to apply these days of grace to all vessels in ports of the United States at the outbreak of the war or to those so in port on the day of the actual issuance of the proclamation? If the latter construction is accepted, it certainly would not be in accordance with the present views of nations nor sanctioned by their recent acts. It would leave a space of five days after the commencement of hostilities when, according to such views and practice, they might be considered exempt from seizure and could safely leave port, but upon issuing of such proclamation became subject to seizure. If they were safe according to the present rule of civilized nations, certainly the issuing of the proclamation at a later day, without declaring that it should be retrospective, should not make them liable.

In the proclamation of the 22nd of April the President had declared that thirty days' grace should be given to neutral vessels found in blockaded ports. Can it be believed that he intended to change the number of days of grace from thirty, already named in one proclamation, to twenty-five in this? If not, why is the 21st of May named? Is it not more reasonable to consider that the same number of days was intended, which, commencing at the outbreak of the war, would bring it to the 21st of May, the day named?

65 While it is true that the rule of construction generally is that statutes have no retrospective or retroactive effect, it is not without exceptions, and the principal question always is, What was the intention of the legislators?

It is contended that the vessels being captured before the proclamation issued, the rights of the captors attached; but if it was the intention to exempt all in port at the outbreak of the war, it is not considered that the attaching of any such right should influence the decisions in these cases. Giving the introductory language of the proclamation the force to which I consider it is entitled, I feel compelled to hold that the intention of the Executive was to fully recognize the recent practice of civilized nations and not to sanction or permit the seizure of the vessels of the enemy within the harbors of the United States at the time of the commencement of war, or to permit them to escape from ports to be seized immediately on entering upon the high seas, and that the fourth article

should be held to apply to all Spanish merchant vessels in the harbor- of the United States upon April 21, 1898, and exempt them from seizure. This will effect the release of the Catalina and the Miguel Jover.

In regard to the cargoes of such vessels it cannot be considered that it could be the intention of the Executive or the policy of any nation to permit vessels to take in their cargoes up to a certain time and leave the port free, and then have them seized so that the cargoes should be liable to condemnation. What makes the free vessel makes the free cargo, although it may be found to belong to the enemy.

The fifth article of this proclamation declares that any Spanish merchant vessel which prior to May 21st, 1898, shall have
66 sailed from any foreign port bound to any port or place in the United States shall be permitted to enter such port and discharge her cargo and afterwards to depart without molestation. This raises a question which is not without di-ficulty in the cases against the Pedro and the Guido.

The testimony shows that both these vessels were owned by a Spanish corporation of Bilboa, Spain, and were engaged in regular trade with outward cargoes from European—particularly Spanish—ports to the Cubans' ports to discharge, thence to some port of the United States—usually Pensacola—for a load of lumber for the return voyage. The Guido had sailed from Liverpool by way of Santander, Corunna, and La Puebla and was bound for Havana. In her regular course, after she had touched at that and several of the Cuban ports, she would have proceeded to Pensacola, and she had among her papers a bill of health for that place, but there was no charter-party or certainty of her going there. She had no cargo for that or any other port of the United States.

The Pedro, a vessel of the same line, had sailed from Antwerp with cargo destined for several Cuban ports. She had been into Havana, discharged some cargo and taken other on board, and was bound to Santiago. After she had touched there and one or two other Cuban ports for which she had cargo she was under charter to proceed to Pensacola to load lumber for some port in Europe. She had on board no cargo for Pensacola.

It is further contended by the claimants of these two vessels that the fact of their ultimate destination, after stopping at other ports, was a port of the United States to take in cargo brings them within the provision of the fifth article of the proclamation, as being vessels which prior to April 21st, 1898, had sailed from
67 a foreign port bound for a port or place of the United States, and extended and elaborate arguments were had and cases cited upon the subject of continuing voyages and their termini. I do not consider that such a construction can be recognized as reasonable when applied to the circumstances of this case, nor that it can for a moment be considered to have been the intention of the proclamation when made.

The reason- for such exemption from seizure are twofold: First, it excuses a vessel which, ignorant of the condition of war, comes

directly into the power of the enemy, and is therefore to that extent a protection to commerce, and tends to prevent a breaking up of commercial relations between nations upon the first, and perhaps unfounded, suspicion of unfriendly relations between them. Secondly, as the material increase of a nation's possession- is always desirable upon the outbreak of war, and the importations of foreign cargoes may well be considered to tend toward such increase, it is desirable to encourage this importation, although brought by ships of the enemy.

But neither of these reasons apply to the cases at bar. These vessels would have been informed of the condition of war long before approaching our shores—in fact, a state of war existed before the Pedro left Havana—and having no cargo to bring to this country they were only coming to take property away, and in the meantime carrying on commerce in the interest of the enemy between its ports and supplying it with necessary provisions with impunity.

It is also urged by the claimants of these vessels that, although they were owned by a Spanish corporation of Bilboa, La Flecha, the general managers of which were Spanish citizens and re-
68 sided at Barcelona, a large portion of the stock of this corporation was owned by subjects of Great Britain, who had a lien on or equitable ownership of the rest of the stock; so that in reality the vessels were neutral property, and had only been put under the Spanish flag to take advantage of certain privileges given them in trading to the Spanish West Indies.

It has been repeatedly declared that the property of a house of trade established in an enemy's country is liable to condemnation as prize, whatever may be the domicile of the partners, and this principle will apply with much greater force to the property of a corporation duly incorporated and acting under the laws of an enemy's country, regardless of the domicile of the individual stockholders or any equitable interest neutrals might have in the stock. A mortgage or equitable lien upon the vessel itself, if held by a neutral, could not protect her from seizure, and much less can equitable interest in the stock of the cor-oration which is the owner. These vessels were owned by a Spanish corporation, sailing under a Spanish patent, flying the Spanish flag, officered and manned by Spanish citizens, nearly, if not quite, all of whom were registered as members of the Spanish naval reserve, and they must be taken and considered as in all respect- property of enemy and subject to forfeiture.

The Panama sailed from New York before the 21st of April, 1898, and was upon the high seas at that time and at the time of capture. The fact that there had been no formal proclamation or declaration of war before she had sailed or at the time she was captured, or that she had at a recent date left a port of the United States, cannot be considered as exempting her from the liability of all enemy's
69 property to capture unless coming directly within the language of the President's proclamation.

The practice of a formal proclamation before recognizing an existing war and capturing enemy's property has fallen into disuse in modern times, and actual hostilities may determine the date

of the commencement of war, although no proclamation may have been issued, no declaration made, or no action of the legislative department of the government had. This date has been declared by the act of Congress of April 25th, 1898, and by the proclamation of the President of the next day to have been April 21st, 1898, including that day; so that any Spanish property afloat captured from that time became liable to condemnation unless exempt by the Executive proclamation.

In the case of the Buena Ventura it is shown by the evidence that she cleared from Scranton, Miss., with permission to touch at Newport News for coal on her voyage to Rotterdam. Although she was to touch there for that purpose, it was not a port of discharge, nor was she from a foreign port, and her case clearly does not come within the language of the proclamation. Had she been captured approaching Newport News for the purpose of coaling, even then there might have been some opportunity for argument that the permission to touch had given her encouragement, and it should in justice furnish the same protection to a vessel coming from a foreign port; but that was not the case. When captured she must have been pursuing the same course she would have pursued had there been no intention to stop for coal, and neither such intention nor permission tended in any way to increase the liability of her capture. She was an enemy's vessel, found upon the high seas at the commencement of the war, and not coming within the exemptions of the proclamation.

70 Her cargo was shipped by a citizen of the United States to a neutral port, consigned partly to the shipper's order and partly to a citizen of Great Britain, and is unquestionably either neutral or the shipper's property. The suggestion that it should be condemned, although neutral, because found in an enemy's vessel and at the time of the capture there had been no proclamation issued declaring it not subject to condemnation, cannot be entertained for a moment.

The policy and law declared in the Executive proclamation is considered to be the law by which this court is governed, whether the capture took place before or after the proclamation was issued. It is the existing law by which rights must be determined, and in this matter there can be no possible question of construction or intention.

The cases of the Pedro and the Guido appear from the testimony and papers found on board to have been mostly shipped by neutrals to parties in the enemy's country. Such shipments are *prima facie* enemy's property and subject to condemnation, but such presumption can be overcome by evidence, and in those cases in which claims and test affidavits have been filed tending to show the ownership time will be given for further proof; but the property all being either perishable or subject to deterioration by delay, or such that the cost of keeping will be disproportionate to its value, an order of sale will issue and the claim stand against the proceeds of sale.

The Panama, after touching at Havana, was bound to Vera Cruz, and a large portion of her cargo is shown to have been shipped to

Mexico and consigned to residents and presumptively citizens
71 of that Republic. That is all *prima facie* neutral property and will be released. The rest, shipped by merchants in New York and consigned to parties in Havana, is presumably the property of the consignees, but where claims and test affidavits have been filed combatting that presumption, time for further proof will be given, as in the cases of the Pedro and the Guido. When the property can be immediately restored to the claimants it will be so ordered, but otherwise it will be sold pending further proof, as the greater part, if not all, is liable to deterioration by the delay.

72 United States District Court, Southern District of Florida.

I, Eugene O. Locke, clerk of said court, hereby certify that the foregoing pages, numbered from one to seventy-one, inclusive, constitute a true copy of the record and proceedings in the case of The United States *vs.* The S. S. "Panama," prize, lately adjudicated in said court, and remaining on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this twenty-sixth day of August, A. D. 1898.

{ Seal District Court of the United States, Southern District of Florida. }

EUGENE O. LOCKE, *Clerk.*

73 Office of clerk U. S. circuit and district courts, southern district of Florida.

KEY WEST, FLA., *August 23rd*, 1898.

List of Papers Forwarded to the Supreme Court of the United States in the Appeal Case of the S. S. Panama.

#1	to 6	5, certificates payment of tonnage duty. clearance from New York.
7	"	9, bills of health.
10	"	17, passenger lists.
18	"	21, vessel's accounts.
22	"	24, store lists.
25	"	49, crew lists and accounts.
50	"	74, passports.
75	"	90, letters from Spanish naval commission, New York.
91	"	96, counsul manifests.
97	"	186, bills of lading.
187	"	204, invoices.
205	"	221, consular invoices.
222	"	295, manifests.
296	"	297, history of guns (two books).
298, log book.		
299, Spanish maritime law.		

Very respectfully,

E. O. LOCKE, *Clerk,*
By J. OTTO, *D'y Clerk.*

Endorsed on cover: Case No. 16,974. S. Florida D. C. U. S. Term No., 127. The Steamship "Panama," Manuel Quevedo, claimant, appellant, *vs.* The United States. Filed September 3d, 1898.

No. 127.

Brief of Kirlin for Appt.

Filed Oct. 31, 1899.

Office Supreme Court U. S.
FILED
OCT 31 1899
JAMES H. MCKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES

October Term, 1899

No. 127

The Steamship Panama,
Manuel Quevedo
Claimant-Appellant

against

The United States
Libelant-Appellee

BRIEF FOR THE PANAMA

CONVERS & KIRLIN
Proctors for Claimant-Appellant

J. PARKER KIRLIN
Advocate

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1899.

The Steamship PANAMA, MANUEL QUEVEDO, Claimant-Appellant, AGAINST THE UNITED STATES, Libelant-Appellee.	No. 127. (Prize.)

BRIEF FOR THE PANAMA.

Statement.

This is an appeal from a decree of the District Court of the United States for the Southern District of Florida, entered May 27, 1898, under which the steamship *Panama* was condemned as lawful prize of war (Rec., p. 9).

The ground of the condemnation, as stated in the final decree, was:

"That the said steamer *Panama* is enemy's property, and was upon the high seas at the time of the President's proclamation exempting certain vessels from arrest" (p. 9).

The proofs upon which the condemnation rests consist of the answers given by Raymon Burgas, Purser, by Gaspar Thompson, Chief Engineer, and by Manuel Quevedo,

the Master of the *Panama*, to the standing interrogatories, and of the documents seized on board the ship by the captors.

There was also filed with the papers an affidavit, made before one of the Prize Commissioners, by Gabriel Reyna, a passenger on the *Panama*, which, though printed in the transcript, is not properly a part of the record (*The Aliŭe and Fanny*, Spink's Pr. Cas., at p. 329; The *Dos Hermanos*, 2 Wheat., 76).

The original documents, which have been certified to this Court by the Court below, are voluminous, and were not attached to the transcript of the record on appeal. For that reason they have not been printed.

From the evidence produced it appears that the *Panama* was a Spanish merchant vessel of 1,432 tons register (Burgas, Ans. to 5th Int., p. 23), owned by the *Campania Trasatlantica*, a corporation of Barcelona. She carried a crew of seventy one men all told. Her usual trade was between New York and Vera Cruz, and other Mexican ports, *via* Havana (Ansrs. to 7th and 8th Ints., pp. 21-23, 27-31), with general cargoes, passengers and the mails.

In accordance with a mail contract with the Spanish government, she carred two breech loading nine-centimeter Hontoria guns, one Maxim rapid-fire gun, and two saluting guns, besides a quantity of small arms (Ans. to 31st Int., p. 33). The large guns had been mounted about three years before, and the small arms had been shipped about one year before the capture (Ans. to 31st Int.). The guns were not, however, fitted for action (Test. Aff., p. 5).

The *Panama* cleared at the Custom House in New York with a general cargo, twenty-nine passengers and the United States mails, on April 20, 1898. She had been consigned at New York to Juan M. Ceballos, a native-born American citizen, under whose agency she was laden and despatched (p. 5.)

The voyage was from New York to Vera Cruz *via* Havana. The clearance issued by the Collector of the Port of New York on April 20th, was in these terms (Original on file):

"Sec. 4201, Rev. Stats. N. Y. Cat. No. 490.

"*The United States of America.*

"*Clearance of Vessel to a Foreign Port.*

"District of the City of New York,
Port of NEW YORK.

"THESE ARE TO CERTIFY ALL WHOM IT DOTH CONCERN:

"That Ml. Quevedo, Master or Commander of the Spn. St. PANAMA, burden 1470 Tons, or thereabouts, mounted with.....Guns, navigated with 71 Men.....f'rgn..... built and bound for Havana, Progreso, Veracruz, having on board.....MERCHANDISE and STORES, hath here entered and cleared his said vessel, according to law.

"Given under our hands and seals, at the Custom House of the Port of New York, this 20th day of April, one thousand eight hundred and ninety-eight, and in the 122d year of independence of the United States of America.

"J. C. SAGE, T. RAYMOND,
"Deputy Naval Officer. Deputy Collector."

The first entry in the log for April 20th (original on file) reads:

"Sailed from New York for Havana at 2.30 *with the mails*, a pilot and passengers on board. Left the wharf and proceeded in charge of pilot, clearing the channel at 3.56. Pilot left us when abreast of Scotland Lightship."

It appears from the log that the steamer pursued the usual course of vessels bound south along the coast, until she passed Alligator Reef light, and then bore off for Havana.

Barnegat light was passed distant 6½ miles on the evening of the 20th. The customary course was pursued thence to Cape Hatteras, where the fixed light and the lightship were both sighted on the 21st. From this point the course was laid to Jupiter, which was sighted on the 23d, and passed in

the twenty-second hour, seven miles distant. The record of the last watch on the 23d [by land time, 8 A. M. to 12 M. of the 24th], states:

"In sight of Jupiter Light, which we passed at 21.45 [9.45 A. M.], 7 miles distant, and continued along the coast with fresh south wind, with same sea, weather cloudy. *Passed the Hotel 3 miles distant* at 23.40 [11.40 A. M.], and at 12 M. it bore N. 53 West, distant 5 miles."

The log entry for the 24th is as follows:

"We commence this day on usual course *in sight of the Florida coast*. At 1.42 were in true E. W. line with first Refugio. Wind south, smooth sea, and clear sky. At the fourth hour left the watch with nothing new."

"4th to 8th hour: *Course convenient to the coast and near to same*. Night came with Fowey in sight. So on to the eighth hour.

"8th to 12th hour: Sailing within sight of Fowey, *which we passed at tenth hour distant 3 miles*. At eleven we sighted the Carrisfort Light, and continued the course of the canal. Wind light from south, smooth sea, and clear. At twelfth hour left watch.

"12th to 16th hour: Course following the coast with Fowey and Carrisfort Lights in sight. South wind, smooth sea. Passed Carrisfort at 12.38 distant 4 miles; and at 15.38 sighted Alligator bearing S. W. on fore quarter. Left watch at sixteenth hour without anything further to record.

"16th to 20th hour: At 16.35 we passed Alligator N. 50 W., distant 10 miles. Day broke clear and all well to twentieth hour.

"20th to 24th hour: Continued on course indicated, with light north-east wind and cloudy. At noon on the apparent meridian by observation we found our location West 79° 18'.

Entry for April 25th:

"We commence this day with course as noted, light west- northwest wind, smooth sea, clear, and in sight of Cuban coast, directly north of Matanzas Mountain at 2 20. At fourth hour passed the watch.

"4th to 8th hours: Continued in sight of Cuba bound to Havana. At 5.30 we sighted three war vessels. At 5.40 the nearest one bore down on us, showing the American flag. We at once

showed our national colors, and on coming nearer found the vessel to be the *Mangrove*. At 5.50 she fired a gun blank shot, and we stopped the engines. Latitude, 23° 21′ North; longitude, 75° 47′ West * * * from San Fernando and 25 miles from the Havana Morro. At 5.55 she again fired, this time with ball, and approached to speak to us. At 6.10 she lowered a boat, in which came an officer, who remained on board, and who informed us that Spain had declared war against the United States and that we were his prisoners. When this officer came on board the *Mangrove* fired a third shot with ball, and at 6.20 ordered us to proceed slowly towards the *Indiana*. At 6.50, and one mile away, she again fired with ball, and we stopped. She approached nearer to speak to the officer. At 7.40 we were boarded by an officer from the *Indiana*, one sergeant and ten soldiers of marine infantry and five sailors, who took charge of management of the vessel."

The log then records that the steamer proceeded in the wake of the *Mangrove* into Key West, where she came to anchor at ten o'clock, A. M., April 26, 1898.

The log further states that at 11.15 on the 25th, "the officer asked for the key of the *mail room*, which was delivered to him."

It appears from the log, and was testified in answer to the standing interrogatories, that the steamer made no resistance at the time of her capture, which was effected by a converted lighthouse tender (Ansrs. to 3rd Int., pp. 22, 26, 30). There was not known to be any military or naval officers amongst the passengers (Ansrs. to 26th Int., pp. 24, 28, 32); and the ship carried no arms or munitions of war except the mounted guns without breeches (Test Aff., p. 5, above referred).

The steamer was libeled in the District Court for the Southern District of Florida on the 26th of April, 1898 (Rec., p. 1). The libel alleged that the *Panama* and her cargo had been captured on the high seas by the United States ship of war *Mangrove* on April 25th, and had been brought into the port and harbor of Key West, within the jurisdiction of the court; and that both were lawful prize of war, and subject to be condemned and forfeited to the United States as such (Rec., p. 1).

Process under the libel was executed on the same day, by reading the original to the master and posting two copies (Rec., p. 3). This process cited and admonished "all persons whomsoever, having any right, title, claim, or interest, in or to the said steamer *Panama*, to appear at an admiralty session of this Court, to be held in the court-rooms of said Court, at Key West, in said district, on Wednesday, the 11th day of May, A. D. 1898, at 10.30 o'clock in the forenoon of that day, to show cause, if any they have, why it should not be decreed according to the prayer of the libel, and to attend upon every session of said Court from that time held until a final decree shall be rendered in the premises" (Rec., p. 3).

The time for the presentation of claims having been extended, the master of the *Panama*, Manuel Quevedo, intervening as bailee for the interest of the owner, filed a claim to the vessel on May 18, 1898, denying that she was lawful prize, and praying that she be restored, with damages and costs (p. 4).

On the same day the master filed a test affidavit, and on May 24th, by leave of the Court, a supplementary test affidavit, in which the circumstances of the voyage and of the capture were set forth, the provisions of the mail contract above referred to were stated, and the suggestion was made that the vessel was exempt from capture and condemnation by the terms of a proclamation issued by the President on April 26, 1898, and by the general prize law as administered in the United States (pp. 5–8).

The circumstances which led up to this capture appear in certain acts of the Congress and of the Executive Departments of the Government, to which it will be convenient here to refer.

On April 20, 1898, the Congress passed, and the President approved, the following joint resolution:

"(No. 24.) Joint resolution for the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the Island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing

the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect.

"Whereas the abhorent conditions which have existed for more than three years in the Island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of a United States battle ship, with two hundred and sixty six of its officers and crew, while on a friendly visit in the harbor of Havana, and cannot longer be endured, as has been set forth by the President of the United States in his message to Congress of April eleventh, eighteen hundred and ninety-eight, upon which the action of Congress was invited: Therefore,

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

"FIRST.—That the people of the Island of Cuba are, and of right ought to be, free and independent.

"SECOND.—That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the Island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

"THIRD.—That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

"FOURTH.—That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said Island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the Island to its people."

"Approved April 20, 1898" (30 *Stat. at Large* Pt. II., p. 738).

Upon this resolution being communicated to the Spanish Minister in Washington, he immediately demanded his passports in the following letter:

"WASHINGTON, April 20.

"MR. SECRETARY:

"The resolution adopted by the Congress of the United States of America and approved to-day by the President is of such a nature that my permanence in Washington becomes impossible, and obliges me to request of you the delivery of my passports. The protection of the Spanish interests will be intrusted to the French Ambassador and to the Austro-Hungarian Minister. On this occasion, very painful to me, I have the honor to renew to you the assurances of my highest consideration.

"LOUIS POLO Y BERNABÉ."

"To HON. JOHN SHERMAN,
Secretary, &c.

(*Foreign Relations*, 1898).

On the same day, the Secretary of State sent the Spanish Minister his passport, in the following words:

"UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

"*To all to Whom These Presents Shall Come.*

"GREETING: Know ye that the bearer hereof, Senor Don Louis Polo y Bernabe, Envoy Extraordinary and Minister Plenipotentiary of Spain to the United States, is about to travel abroad, accompanied by his family and suite. These are therefore to request all officers of the United States, or any State thereof, to permit him to pass freely, without let or molestation, and to extend to him all friendly aid and protection in case of need.

"In testimony whereof, I, John Sherman, Secretary of State of the United States of America, have hereunto set my hand and caused the seal of the Department of State to be affixed at Washington this twentieth day of April, A. D. 1898, and of the independence of the United States of America the one hundred and twenty-second.

[SEAL.] "JOHN SHERMAN."

On April 20, 1898, the text of the above resolution of Congress, passed on that day, was cabled to the United States Minister at Madrid, together with the following despatch:

"To WOODFORD, Minister, Madrid:

"You have been furnished with the text of a joint resolution voted by the Congress of the United States on the 19th inst., approved to day, in relation to the pacification of the island of Cuba. In obedience to that act the President directs you to immediately communicate to the Government of Spain said resolution, with the formal demand of the Government of the United States that the Government of Spain at once relinquish its authority and government in the island of Cuba and Cuban waters. In taking this step, the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction or control over said island, except for the pacification thereof, and asserts its determination when that is accomplished to leave the government and control of the island to its people, under such free and independent government as they may establish.

"If by the hour of noon on Saturday next, the 23d of April, instant, there be not communicated to this Government by that of Spain a full and satisfactory response to this demand and resolution whereby the ends of peace in Cuba shall be assured, the President will proceed without further notice to use the power and authority enjoined and conferred upon him by the said joint resolution to such extent as may be necessary to carry the same into effect.

"SHERMAN."

(*Foreign Relations*, 1898).

On April 20th the *Panama* was granted a clearance, in due form, by the Collector of the Port of New York, and shortly after noon sailed for Havana and ports in Mexico with the United States mails.

The reply of the Minister at Madrid to the above message was received on April 21, 1898:

"SHERMAN, Washington:

"Early this (Thursday) morning, immediately after the receipt of your open telegram, and before I had communicated same to Spain, the Spanish Minister of Foreign Affairs notified me that the diplomatic relations are broken between the two countries, and that all official communications between their respective representatives have ceased. I accordingly asked for safe passports. Turn legation over to British Embassy and leave for Paris this afternoon. Have notified Consuls.

"WOODFORD."

(*Foreign Relations*, 1898).

The letter from the Spanish Minister of Foreign Affairs, to which reference is made in the foregoing telegram, was in these words:

"MADRID, April 21, 1898.

"Hon. STEWART L. WOODFORD,

"Minister of the United States of America.

"Dear Sir: In compliance with a painful duty I have the honor to inform Your Excellency that the President having approved a resolution of both Chambers of the United States, which in denying the legitimate sovereignty of Spain and threatening an immediate armed intervention in Cuba, is equivalent to an evident declaration of war, the Government of His Majesty has ordered its Minister in Washington to withdraw without loss of time from the North American territory, with all the *personnel* of the Legation.

"By this act the diplomatic relations which previously existed between the two countries are broken off, all official communications between their respective representatives ceasing, and I hasten to communicate this to Your Excellency in order that on your part you may make such dispositions as seem suitable.

"I beg Your Excellency to acknowledge the receipt of this note at such time as you deem proper, and I avail myself of this opportunity to reiterate to you the assurances of my distinguished consideration.

"P. GULLON."

(*Foreign Relations*, 1898).

On this date instructions were given by the Secretary of the Navy to the Commander-in-Chief of the North Atlantic squadron to blockade certain ports in Cuba:

"WASHINGTON, April 21, 1898.

"SIR,—The Department's instructions of April 6 are modified as follows: You will immediately institute a blockade of the north coast of Cuba, extending from Cardenas on the east to Bahia Honda on the west; also, if in your opinion your force warrants, the port of Cienfuegos, on the south side of the island. It is considered doubtful if the present force at your command would warrant a more extensive blockade.

"It should be borne in mind that whenever the Army is ready to embark for Cuba the Navy will be required to furnish the necessary convoy for its transports. For this reason it does not seem desirable that you under-

take at present to blockade any more of the island than has been indicated. It is believed that this blockade will cut off Havana almost entirely from receiving supplies from the outside.

"The Navy Department is considering the question of occupying the port of Matanzas by a military force large enough to hold it and to open communications with the insurgents, and this may be done at an early date, even before the main party of the Army is ready to embark. If this operation is decided upon, you are directed to co-operate with the Army and assist with such vessels as are necessary to cover and protect such a movement.

"If you obtain any information of the movements of Spanish ships of war in any part of the West Indies, you will, if practicable, inform the Department by telegraph of such movements.

"In conducting such other operations as you may deem desirable, you will be governed by the instructions contained in the Department's letter of April 6.

"The Department does not wish the defenses of Havana to be bombarded or attacked by your squadron.

"Very respectfully,

JOHN D. LONG,
Secretary.

"Commander in Chief,
"U. S. Naval Force, North Atlantic Station."

(*Appendix to the report of the Chief of the Bureau of Navigation*, 1898, p. 175.)

On April 22d the President publicly proclaimed this blockade:

"*By the President of the United States:*

A PROCLAMATION.

"Whereas, by a joint resolution passed by the Congress and approved April 20, 1898, and communicated to the government of Spain, it was demanded that said government at once relinquish its authority and government in the island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters, and the President of the United States was directed and empowered to use the entire land and naval forces of the United States and to call into the actual service of the United States the militia of the several States to such an extent as might be necessary to carry said resolution into effect; and

"Whereas, in carrying into effect said resolution, the President of the United States deems it necessary to set on foot and maintain a blockade of the north coast of

Cuba, including all the ports on said coast between Cardenas and Bahia Honda, and the port of Cienfuegos, on the south coast of Cuba:

"Now, therefore, I, William McKinley, President of the United States, in order to enforce the said resolution, do hereby declare and proclaim that the United States of America have instituted and will maintain a blockade of the north coast of Cuba, including ports on said coast between Cardenas and Bahia Honda and the port of Cienfuegos, on the south coast of Cuba, aforesaid, in pursuance of the laws of the United States and the law of nations applicable to such cases. An efficient force will be posted, so as to prevent the entrance and exit of vessels from the ports aforesaid. Any neutral vessel approaching any of said ports or attempting to leave the same without notice or knowledge of the establishment of such blockade will be duly warned by the commander of the blockading forces, who will indorse on her register the fact and the date of such warning, where such indorsement was made; and if the same vessel shall again attempt to enter any blockaded port she will be captured and sent to the nearest convenient port for such proceedings against her and her cargo as prize, as may be deemed advisable.

"Neutral vessels lying in any of said ports at the time of the establishment of such blockade will be allowed thirty days to issue therefrom.

"In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed. Done at the City of Washington this 22d day of April, A. D. 1898, and of the Independence of the United States the one hundred and twenty-second.

"WILLIAM MCKINLEY.

"By the President.

"JOHN SHERMAN,

"Secretary of State."

The blockade was instituted on April 22d. (*Appendix to Report of the Chief of the Bureau of Navigation*, 1898, pp. 167–8).

On April 23d the Spanish Royal decree was issued, in which it was said:

"ART. I. The state of war existing between Spain and the United States terminates the Treaty of Peace and Friendship of the 27th October, 1795, the Protocol of the 12th January, 1877, and all other agreements, compacts

and conventions in force up to the present between the two countries" (*Gaceta de Madrid*, 24 Apl., 1898; *London Gazette*, May 3, 1898).

On April 25th, the President addressed a message to the Congress, with which he transmitted "for its consideration and appropriate action" the foregoing correspondence between the State Department and its Minister and between the latter and the Spanish Minister of Foreign Affairs, and a notification that he had declared a blockade of certain Cuban ports, adding:

"In view of the measures so taken, and with a view to the adoption of such other measures as may be necessary to enable me to carry out the expressed will of the Congress of the United States in the premises, I now recommend to your Honorable body the adoption of a joint resolution declaring that a state of war exists between the United States of America and the Kingdom of Spain, and I urge speedy action thereon, to the end that the definition of the international status of the United States as a belligerent power may be made known and the assertion of all its rights and the maintenance of all its duties in the conduct of a public war may be assured" (*Messages and Papers of the Presidents*, Vol. 10, p. 154).

On the same day the Congress passed, and the President approved the following:

"AN ACT DECLARING THAT WAR EXISTS BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF SPAIN.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:*

"FIRST.—That war be, and the same is hereby, declared to exist, and that war has existed since the twenty-first day of April, *anno domini* eighteen hundred and ninety-eight, including said day, between the United States of America and the Kingdom of Spain.

"SECOND.—That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States to such extent as may be necessary to carry this Act into effect.

"Approved April 25, 1898."

(30 *Stat. at Large, Pt.* 2, *Ch.* 189.)

On April 26th, 1898, the President issued the proclamation of war referred to in the claim and test affidavit herein, which was in these terms:

[No. 8.]

"*By the President of the United States of America*:

"A PROCLAMATION.

"WHEREAS, by an act of Congress, approved April 25, it is declared that war exists and that war has existed since the 21st day of April, A. D. 1898, including said day, between the United States of America and the Kingdom of Spain; and

"WHEREAS, it being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, it has already been announced that the policy of this government will be not to resort to privateering, but to adhere to the rules of the Declaration of Paris:

"Now, therefore, I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim:

"1. The neutral flag covers enemy's goods, with the exception of contraband of war.

"2. Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag

"3. Blockades in order to be binding must be effective.

"4. Spanish merchant vessels in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places, and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; *provided*, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any despatch of or to the Spanish government.

"5. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port, bound for any port or place in the United States, shall be permitted to enter such port and to discharge her cargo, and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

"6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

"In witness whereof I have hereto set my hand and caused the seal of the United States to be affixed.

"Done at the City of Washington, on the twenty-sixth day of April, in the year of our Lord [SEAL.] one thousand eight hundred and ninety-eight, and of the independence of the United States the one hundred and twenty-second.

"WILLIAM MCKINLEY.

"By the President.

"ALVEY A. ADEE,

"Acting Secretary of State."

(30 *Statutes at Large*, p. 1770.)

On the day the foregoing proclamation was issued (April 26th) the *Panama* was in the port of Key West, and was not within the class of vessels excluded from the privileges and immunities granted by the Fourth Section thereof.

The *Panama* was a mail steamer, and was further entitled to immunity under the 6th Section of the Proclamation. She had taken the United States mails at New York (Log, April 20th), and delivered them over to the captors (Ans. to 24th Int., p. 32) on the night of her capture (Log, April 25th, second watch).

The cause was heard below by the Hon. James W. Locke, District Judge, in the latter part of May, 1898, and was decided in an oral opinion delivered May 27th (p. 11), which also disposed of the cases of the *Buena Ventura*, *Catalina*, *Miguel*, *Jover*, *Pedro* and *Guido*, and their cargoes. The opinion of the Judge was subsequently reduced to writing, and was filed July 13th (p. 34).

It appears from the opinion and from the decree that the sole ground of condemnation was the enemy character of the vessel, and her exclusion from the immunity granted by the Fourth Article of the Proclamation, by reason of the fact, as the Court held, that she was not in a port or place of the United States on April 21st, the date on which this section was deemed to have become operative.

The vessel was sold under the final decree entered on May 27th (pp. 9–11), and her proceeds were deposited to abide the event of this appeal. Some of the cargo belonging to citizens and neutrals was released, and some of it was condemned.

The Court on May 27th denied the claimant's motion for leave to take further and additional proofs respecting the matters set forth in the test affidavit and supplementary test affidavit (p. 8).

The claimant Manuel Quevedo duly appealed to this Court from that part of the decree which condemned the ship, and assigned the following errors (p. 112):

"1st. For that the Court held and decided that the *Panama* was lawful prize of war.

"2d. For that the Court omitted and refused to hold that the *Panama* was not lawful prize of war.

"3d. For that the Court omitted and refused to find that the *Panama* was privileged and exempt from capture and condemnation as prize under and by virtue of the president's proclamation issued April 26, 1898.

"4th. For that the Court omitted and refused to find that the *Panama* was exempt from capture and condemnation by reason of the fact that her cargo had been taken on board in, and she had sailed from, a port of the United States prior to May 21, 1898.

"5th. For that the Court omitted and refused to hold that the vessel was privileged and exempt from condemnation by reason of the fact that she was in a port or place of the United States on April 26, 1898, and was not within the classes of vessels excepted from the priviledges accorded by the Fourth Article of the Proclamation.

"6th. For that the Court omitted and refused to allow further proofs of the matters set up in the test affidavit and supplementary test affidavit."

I.

The Panama was exempt from condemnation by the terms of the 4th section of the Proclamation of April 26th, 1898.

The parts of the proclamation material to this point are:

"Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations as sanctioned by their recent practice, it has already been announced that the policy of this government will be not to resort to privateering but to adhere to the rules of the Declaration of Paris;

"Now, therefore, I, WILLIAM M'KINLEY, President of the United States of America, by virtue of the power vested

in me by the constitution and laws, do hereby declare and proclaim. * * *

"4. Spanish merchant vessels in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places, and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; *provided*, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any despatch of or to the Spanish government. * * *

"Done at the City of Washington, on the *twenty-sixth* day of April, in the year of our Lord one [SEAL.] thousand eight hundred and ninety-eight, and of the independence of the United States the one hundred and twenty-second.

"WILLIAM MCKINLEY.

"By the President,

"ALVEY A. ADEE,

"Acting Secretary of State."

(30 *Statutes at Large*, p. 1770.)

On April 26th the *Panama* was in the port of Key West, "a port * * * within the United States," and was not within the proviso. It is contended, therefore, that she was within the specific terms of the Proclamation, and hence exempt from condemnation.

The construction of this provision by the Court below was this:

"Giving the introductory language of the Proclamation the force to which I consider it is entitled, I feel compelled to hold that the intention of the Executive was to fully recognize the recent practice of civilized nations, and not

to sanction or permit the seizure of the vessels of the enemy within the harbors of the United States at the time of the commencement of war, or to permit them to escape from ports to be seized immediately on entering upon the high seas, and that the fourth article should be held to apply to all Spanish merchant vessels in the harbor of the United States *upon April* 21, 1898, and exempt them from seizure" (Opinion, p. 38).

The grounds upon which the District Judge rested his decision condemning the *Panama* are as follows:

"The *Panama* sailed from New York before the 21st of April, 1898, and was upon the high seas at that time and at the time of capture. The fact that there had been no formal declaration of war before she had sailed, or at the time she was captured, or that she had at a recent date left a port of the United States, cannot be considered as exempting her from the liability of all enemy's property to capture unless coming directly within the language of the President's proclamation.

"The practice of a formal proclamation before recognizing an existing war and capturing enemy's property has fallen into disuse in modern times, and actual hostilities may determine the date of the commencement of war, although no proclamation may have been issued, no declaration made, or no action of the legislative department of the Government had. This date has been declared by the Act of Congress of April 25, 1898, and by the proclamation of the President of the next day to have been April 21, 1898, including that day; so that any Spanish property afloat captured from that time became liable to condemnation unless exempt by the Executive proclamation."

From these passages in his opinion it is seen that the forfeiture of the *Panama* was reached by giving retroactive effect to this section of the proclamation, making it apply to vessels in our ports on April 21st, and excluding from its privileges the vessels in United States ports on the day of its issue, April 26, which were not in such ports on April 21st.

Such construction is contrary to the general rule that proclamations take effect only at their date, and violates

the principle that all relaxations of belligerency are to be construed in favor of and not against the interests of those for whose benefit they are designed.

If effect had been given this section of the proclamation as of the day of its date, not only the *Miguel Jover* and *Catalina*, which sailed from New Orleans on April 21st, but also the *Panama* which left New York on April 20th, the *Buena Ventura*, which departed from Ship Island on April 19th, would all have been released; for all were in Key West on that day.

By such a result fair and honorable to the Government, and authorized by the terms of the proclamation, the injustice and inequality of releasing some and condemning others, where all are equally innocent and entitled to similar treatment, would have been avoided, and the practices of the United States would have more nearly accorded with its time-honored and most public professions.

(**1**.) Force and effect should be given to the fourth article of the proclamation as of the day of its date.

(**a**.) Unless the contrary is stated on the face of a proclamation, it is undoubtedly the general rule that it takes effect from the date of its issue (*Lapeyre* v. *United States*, 17 Wallace, 191; *U. S.* v. *Norton*, 97 U. S., 170; *De Bow* v. *U. S.*, 11 Ct. Cl., 676).

In *Lapeyre* v. *U. S.* (*supra*) Mr. Justice Strong said:

"The only inquiry presented for our consideration is when the proclamation which is the hinge of this controversy, took effect. * * * There is no Act of Congress, and nothing to be found in American jurisprudence, which bears very directly on the subject" (p. 195). "A very careful and learned English writer (*Chitty on Prerogatives*, 106) says: 'A proclamation must be under the great seal, and if denied, *is to be tried by the record thereof.*' * * * Under the circumstances it may be well to look to the analogy afforded by the promulgation of statutes" (p. 196). "We know that the established usage is to publish proclamations, with the laws and resolutions of Con-

gress, concurrently in the newspapers and in the same volume with those laws and resolutions at the end of the session. There is no statute fixing the time when Acts of Congress shall take effect, but it is settled that where no other time is prescribed, they take effect from their date (*Matthews* v. *Zane*, 7 Wheat., 211). * * * The date is an unvarying guide. If that be departed from, the subject may be one of indefinitely recurring litigation" (p. 199). "The only way to guard against these mischiefs is to apply the same rule of presumption to proclamations that is applied to statutes, that is, that they had a valid existence on the day of their date, and to permit no inquiry upon the subject. * * * If the proclamation here involved were a resolution or an act of Congress, no such question could arise. That 'a proclamation * * * if denied, *is to be tried by the record thereof*,' and that in such case the proper plea is *nul tiel record*, seems to be conclusive upon the subject.

"It would be unfit and unsafe to allow the commencement of the effect whenever the question arises, whether at a near or a distant time, to depend upon the uncertainty of parol evidence, or upon anything extrinsic to the instrument itself, as found in the archives of the nation" (p. 200).

Wheaton, Maritime Captures and Prizes (p. 299), lays down the same rule:

"An armistice, truce or other suspension of hostilities, binds the contracting parties *from the date* of its conclusion."

This rule also accords with the general principle that licences granted during war do not act retrospectively (2 *Halleck Int. Law*, Baker's Ed., p. 360).

(**b**.) Under the Queen's Order in Council, 1854, issued shortly after the beginning of the Crimean war, and from which this section of the President's proclamation is derived, the immunities accorded to Russian vessels attached on and from the date of issue; and the same rule was followed in the French and Russian proclamations, though war existed before the date of any of them.

The Queen's Order, dated March 29th, 1854 (App. B,

post p. 42), which, for purposes of comparison, may be set opposite the similar provision in the President's proclamation, was as follows:

Queen's Proclamation.

Russian merchant vessels, in any ports or places within her Majesty's dominions, shall be allowed until the tenth day of May, next, *six weeks from date hereof*, for loading their cargoes and departing from such ports or places; and that such Russian Merchant Vessels, if met at sea by any of her Majesty's ships, shall be permitted to continue their voyage, if on examination of their papers it shall appear that their cargoes were taken on board before the expiration of the above term; Provided, that nothing herein contained shall extend or be taken to extend to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any despatch of or to the Russian Government.

President's Proclamation

4. Spanish merchant vessels in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places, and such Spanish merchant vessels, if met at sea by any United States ships, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; Provided, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any despatch of or to the Spanish government.

The French proclamation of March 27, 1854 (App. C., *post*, p. 43), also became operative only from its date:

ART. 1er. Un delai de six semaines *à partir de ce jour* est accordé aux navires de commerce russes pour sortir des ports français.

En conséquence, les navires de commerce russes, qui se trouvent actuellement dans nos ports, ou ceux qui, étant

sortis des ports russes antérieurement à la déclaration de guerre, entreront dans les ports français, pourront y sejourner et compléter leur chargement jusqu'au neuf mai inclusivement.

The Russian decree was dated April 19, 1854. Though it stated no date for the commencement of its effect, the implication is that this was on the day of its date:

Un delai de six semaines est accordé aux navires de commerce anglais et français qui se trouvent dans nos ports pour effectuer leur chargement et faire voile sans empêchement pour l'étranger. Dans les ports de la mer Noire, de la mer d'Azoff et de la mer Baltique ce delai sera compté a partir du 25 avril courant: et dans les ports de la mer Blanche à partir du jour où la navigation aura été ouverte dans chacun d'eux (App. D, p. 44).

It is seen by reference to these previous practices, not only that the decrees of grace to shipping have not been impliedly retroactive, but that by express terms they have been given effect from their date, which, like that of the President's proclamation, was subsequent to the existence of war.

The Queen had recognized the existence of war by her earlier Order of March 28th (App. A., *post*, p. 41), and the French proclamation was dated March 27th.

Nothing but difficulty is encountered in attempting to carry the date of effect back of the date of issue. The reasons for carrying it back to April 21st are equally if not more cogent in support of the claim that it should date back to the 20th or the 19th.

The date of *expiration* of the privileges accorded was expressly fixed at May 21st. If the beginning of the effect was on April 26th the period of grace would have been twenty-five days. But as it was not said expressly that this was intended as the period, the District Judge read into the proclamation an intention to have its privileges apply only to vessels which were actually in ports or places of the United States *on April 21st*, construing the first clause so that it should read: "Spanish merchant vessels in any ports or places within the United States

[on April 21st, 1899], shall be allowed till May 21st, inclusive, for loading their cargoes and departing from such ports and places," &c.

By that construction he excluded the *Panama* from the exemption intended to be conferred by this section, for the reason, as he held, that she was not within a port or place of the United States on April 21st (Opinion, pp. 27, 28).

(c.) If there be any valid doubt as to when this section of the proclamation became effective, it should be construed liberally in favor of the claimant.

Such is the rule laid down in a number of similar cases which arose under the Queen's proclamation in 1854.

In The *Phœnix*, Spinks' Prize Cases, p. 5, Dr. Lushington first dealt with this matter:

"Much of the argument in the present case has turned upon that document which bears date the 29th of March last, and which immediately succeeds an order in council for preventing vessels clearing out for Russia, and ordering, as is customary in all wars, a general embargo or stoppage of enemies' vessels. Now upon what princ.ple am I to put a construction upon this document? I am perfectly free to confess that I think it to be quite clear that whenever the Government of Great Britain or of any other country, by a public document in the nature of an order in council, *relaxes the severity of belligerent rights*, it ought to be taken *in favor of the party for whom it is intended, and that a liberal construction should be put upon it*. If it were necessary to confirm my opinion by authority, I could resort without difficulty to that of Lord Stowell. However, it is perfectly clear that that is the true principle. When discussion arises with regard to the intention of those from whom the document emanates, we can only look for that intention to the words in which they express it. The principle being to put upon the words *the most extensive interpretation which is consistent with them*, I take it for granted there must be words in the document sufficient to justify that interpretation. I am not at liberty to travel out of the document. *If the words of the document are capable of two constructions, then I am clearly of the opinion that the one most favorable to the belligerent party in whose favor the document is issued ought to be adopted;* but the Court must bear in mind that

its province is not *jus dare*, but *jus dicere;* and I must again refer to the principle which I have often enunciated in this Court: *verbis plane expressis omnino standum est.*"

The same learned Judge in The *Argo* (Spinks' Prize Cases, p.52), said:

"I am of opinion that all relaxation of belligerent rights emanating from the Government of this country, and declared in authentic documents, should receive a liberal construction—as liberal a construction as the terms of those documents will admit of."

(**d**.) There can be no question of the *power* of the Executive to exempt from condemnation all Spanish merchant vessels in our ports on April 26th.

The fact that the *Panama* had been previously captured and brought into port, and was under libel on that day is immaterial. It is clearly settled that no rights of the captors had attached up to that date. They have no rights which the Executive may not wholly disregard at any time prior to a decree of condemnation. Mr. Justice Nelson stated this fact most emphatically in the *Aigburth*. Blatchford Prize Cases, 635, 637:

"All captures made by public armed vessels belong to the Government. By the laws of Congress, after the condemnation of prize property, a portion of the proceeds is distributed among the officers and crew of the capturing vessel in proportions depending upon the relative forces of that vessel and of the captured vessel. Still the whole property is proceeded against in behalf of the Government. No title exists in the captors except to the distributive share of the proceeds after condemnation; and, *until then, the captors have no interest which the Court can notice for any purpose.*"

To the same effect are *Stevens* v. *Bagwell*, 15 Vesey, 139; 2 *Halleck, Int. Law*, Baker's Ed., 363; *Davis, Int. Law* 261; *Boyd's, Wheaton*, p. 489.

(**e**.) There are strong reasons why the Executive should be deemed to have intended to release the *Panama* by proclamation.

She had been engaged regularly in trade with New York, carrying the mails to and from that port. A contractual relation for that service was in force between her owners and the United States. She had received the usual clearance from a government officer on April 20th, when there was as much actual war as there was on the 21st, and from another officer had received the mail bags for Mexico. In reliance upon the voluntary clearance, and the implied obligation of the Government, under the mail contract, to permit her to proceed to final destination, she had sailed on a voyage skirting our coast, guided by our lighthouses, passing at times along the Florida coast within our undoubted sovereignty over the marine league of territorial waters, and had steamed directly into the blockading squadron placed in Cuban waters after her departure.

The clearest possible encouragement of the Government actually led to her capture, without previous notice of war, or any opportunity to proceed homeward and separate herself, as a merchant vessel, from the theatre of hostilities between war ships. It is but natural and just to suppose that the Executive would wish to show clemency to a vessel thus virtually lured into captivity.

It is no answer to say that the President might have gone further and given specific orders for the discontinuance of the prize cause. Considerations of policy may have made that step inadvisable. The Executive announced the liberal principles on which the war should be conducted, and made specific provisions relative to the exemption of enemy merchant ships from condemnation. It is proper that the Courts should determine the effect of the proclamation in particular cases.

From the fact that the President, by aproviso, excluded certain vessels from the privileges conferred upon others, and did not include previously captured ships amongst those excluded, the conclusions must be that such vessels, if otherwise within the proclamation, were intended to be freed.

(f.) The general object of the proclamation, as stated in the preamble, and in the more specific rules, was to pro-

vide that the war should be conducted in accordance with the modern views of nations and their recent practices.

Under such practices the right to capture enemy merchant ships has generally been postponed until merchant shipping has had notice of a state of war. The proclamation should be construed in the light of this fact.

Calvo, 4 *Droit International* (5th Ed.), p. 46, quotes with approval the following passage from Hautefeuille on this subject:

"Hautefeuille insists particularly upon the necessity for a special preliminary declaration in the case of a maritime war; 'notice must be given to navigators of the cessation of a state of peace, in order that they may not leave port without taking the precautions needful to avoid danger, and that they may not become the prey of an enemy at the moment when they think they are meeting a friend.' 'Hostilities,' he says, 'committed previous to a declaration of war, or notification of every other equivalent act, indicating the time of the commencement of war, are, in my eyes, violations of the rights of the nation attacked, and of the law of nature. Such violations are all the more culpable because they cannot be rested upon any provisions of the secondary law, upon any custom, or upon any international usage. * * * Every enterprise of that nature is an act of brigandage, which should place its author under the ban of nations, and bring upon the wrongdoers the punishments reserved for pirates.'"

A negative circumstance of importance here is that modern instances are not found of captures made under similar conditions.

A "practice" is not necessarily a custom in the sense in which customs are referred to in municipal law. What has been done by other powers in recent wars is a recent "practice" within the sense of the preamble; and a practice may be negative as well as positive.

It was formerly the practice to seize the persons of enemies on land and detain them as prisoners of war; to confiscate their property and debts due to them, even when contracted in peace. As a matter of strict right, some, if not all, of these things may still be done; but the recent "practice" is not to do any of them (1 *Halleck Itn.*

Law, by Baker, pp. 530-539). The laws of war have been modified and changed with advancing civilization. And as such captures have not been made in recent wars, it may be taken that there is now a practice not to exert the forme rright of capture until after merchant shipping has had full notice.

It is interesting to observe that in the most recent book on the subject—*Owen's Declaration of War*, London, 1889--though the abstract right to capture an enemy's floating property immediately on the acknowledged outbreak of war is stated, no reported case is referred to where a capture was made without previous notice by the captors' country to shipping that a state of war existed (pp. 60, 61). On the contrary, the author lays particular stress on the modern practice of giving notice and affording merchant vessels an opportunity of removing themselves from the regions of hostilities (pp. 54, 55).

(g.) If, however, the proclamation is not held to have become effective on April 26th, then a liberal construction of it should be adopted, having regard to the purpose and intent of the whole proclamation, its objects and aims, and designed to give effect to such objects, rather than one which reads into it a date (April 21st) which would defeat them.

Even though effect be given to it, by relation, anterior to its date (April 26th), it would not follow that the retroactive force should stop at April 21st. No date was expressly fixed for the commencement of immunity. The omission of such date implies either that it was to have force only from its issue, or that it was to include all merchant ships in our ports, or which might have been, or might come in them, before May 21st, the date the immunity expired. The latter construction would perhaps correspond better with the root idea of notice, which underlies the proclamation.

The apparent purpose of the document was to prevent the capture and condemnation of Spanish merchant vessels which might come innocently, and by our encouragement, within our grasp, without knowledge that war had broken out, and without an opportunity, based upon

such knowledge, of separating themselves fully from the conflict and avoiding the risks of capture. Thus, by the Fifth Section, Spanish vessels, which, prior to April 21st, had sailed from any foreign port bound for our ports, were exempted; and by the Fourth Section, a corresponding exemption was doubtless intended to be given to vessels in our ports, or which might have left our ports in ignorance of the war, and were found in waters where, through ignorance, they were liable to capture before an opportunity was given them to leave the theatre of war.

A liberal construction of the proclamation, in the sense in which Dr. Lushington laid down the rule, requires a construction in accordance with its spirit and intent, so that all vessels similarly situated shall have the same exemption. It is illogical and absurd to say that the *Panama* would have been exempt from condemnation if she had not sailed until April 21st, but that because she sailed on the 20th she must be condemned. The Court may reject any construction which would lead to illogical or absurd results. At least such results ought not to be reached through construction, or by reading in a date not expressed.

(**h.**) The Proclamation should be construed with due regard to our traditional policy towards the question of the exemption of private property, at sea, from capture during war.

From the administration of President Munroe, down to the present time, the Executive Department of the Government has consistently and persistently maintained, and has urged upon other Governments, the principle that private property at sea, as on land, should be exempt from capture during war. The messages and correspondence on this subject are collated in 3 *Wharton's International Law Digest*, Section 342.

These views have also been embodied in the treaties with Bolivia in 1858 (*Treaties and conventions between the United States and other Powers*, pp. 90, 93, Art. IX.), and with Italy in 1871. Article XII. of the latter is as follows:

"The high contracting parties agree that, in the unfortunate event of a war between them, the private property

of their respective citizens and subjects, with the exception of contraband of war, shall be exempt from capture or seizure, on the high seas or elsewhere, by the armed vessels or by the military force of either party, it being understood that this exemption shall not extend to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of either party" (*Treaties and Conventions between the United States and other Powers*, pp. 581, 584).

The refusal of the United States to subscribe to the Declaration of Paris in 1856 was based in part on the failure of the other Governments to follow our lead upon this point (2 *Halleck's Int. Law* [*Baker's Ed.*], p. 81). Mr. Marcy, writing to Mr. Seibels July 14, 856, said:

"The objections by the Government of the United States to the declaration of the Paris conference of 1856 are that (1), 'All the four propositions must be taken or none'; (2) they limit the future sovereign power of the parties concerned; (3) they exact the surrender of privateering, a surrender the United States cannot make; (4) they do not exempt private property of non-belligerents from confiscation" (3 *Wharton's Int. Law Dig.*, Sec. 342, p. 268)

Successive Presidents and Secretaries of State have emphasized the desirability of the general adoption of this principle, from the earliest times down to the present day; and President McKinley, whose proclamation of April 26th declared that the war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, is himself an advanced advocate of the doctrine. In his second annual message to the Senate and the House of Representatives, dated December 5, 1898, after the conclusion of the war with Spain, his views on this point were expressed in these words:

"We desire, in common with most civilized nations, to reduce to the lowest possible point the damage sustained in time of war by peaceable trade and commerce. It is true we may suffer in such cases less than other communities, but all nations are damaged more or less by the state of uneasiness and apprehension into which an outbreak of hostilities throws the entire commercial world. It should be our object, therefore, to minimize, so far as

practicable, this inevitable loss and disturbance. This purpose can probably best be accomplished by an international agreement to regard all private property at sea as exempt from capture or destruction by the forces of belligerent powers. The United States Government has for many years advocated this humane and beneficent principle, and is now in position to recommend it to other powers without the imputation of selfish motives. I therefore suggest for your consideration that the Executive be authorized to correspond with the governments of the principal maritime powers with a view of incorporating into the permanent law of civilized nations the principle of the exemption of all private property at sea, not contraband of war, from capture or destruction by belligerent powers" (*Messages and Papers of the Presidents*, Vol. 10, pp. 191, 192).

It is believed that the delegates appointed by the President to the recent Peace Conference at the Hague were instructed to and did endeavor to obtain the assent of that Conference to the general adoption of these principles.

This attitude of the Government towards private property at sea in time of war, so long maintained and adopted by the present Executive, should lead the Court to regard the proclamation as a benevolent design to afford immunity from capture to all vessels over which its protection, by the most liberal interpretation, can be extended.

(**2.**) *The steamer is not within the proviso which excludes certain classes of vessels from the immunities granted by this section.*

(**a.**) There were no Spanish military or naval officers on board the vessel.

Twenty-nine passengers embarked on the steamer at New York; but, so far as appeared or was known, none of them was in the military or naval service of Spain. (Ans. to 26th Int., pp. 24, 28, 32).

(**b.**) The ship carried no contraband.

She carried a general cargo, much of which has been restored to its owners without suspicion that it was of unlawful character. That which was condemned was sold under the direction of the Court at Key West and

New York, and, so far as appears or is known, did not comprise any that was contraband.

The guns which the ship carried under the requirements of her mail contract and for the protection of the mails, are not to be regarded as contraband or munitions of war, within the sense of this section.

Contraband, as here referred to, means contraband cargo, not contraband portions of the ship's permanent equipment.

If the furnishings of a ship could be regarded as contraband, every ship would have contraband on board.

The large guns she carried had been mounted three years before her capture, the twenty Remingtons had been on board many years, and the ten Mausers had been shipped about a year before (Ans. to 31st Int., p. 33).

The purser and the master both testified that these guns were on board the ship pursuant to the contract with the Spanish Government, which required the ships to be fitted with such guns for the protection of the mails (Ans. to 31st Int., pp. 25, 33). The article of the contract was stated by the master to the prize commissioner (p. 33). In the test affidavit the terms of this contract are stated (pp. 5 and 6), and a large printed book, containing the entire contract, was produced and filed by the master with his supplementary test affidavit (pp. 8 and 9). That book is now on file in this Court.

It was decided by the French Council of Prizes, in 1801, that the presence of mounted guns on board a vessel, forming a part of her ordinary equipment, constituted no ground for seizure and condemnation, if she would have been exempt from seizure without them (*Pistoye et Duverdy, Des Prises Maritimes*, Vol. 2. p. 51).

In view of the contention of one of the briefs filed for the captors, that the *Panama* should not be deemed a merchant vessel, within the meaning of the proclamation, an extract from the decision in *Le Pégou* (*supra*), will not be inappropriate:

"For my part, I think, having arms on board and mounted, is not of itself sufficient to justify the charge that the vessel is armed for war.

"Armament for war is a preparation purely offensive. It is proved when there is no other object in the armament but that of attack, or when the circumstances indicate that such is the principal aim of the enterprise. Then the vessel is rated an enemy or a pirate, if not furnished with documents capable of removing all suspicion.

"But defense is a natural right; and the means of defense are legitimate in sea voyages as in other perilous undertakings in life. A ship which has but a small crew and carries a considerable cargo is evidently destined for commerce, and not for war. The arms found on such a ship are not deemed to be for plunder or hostilities, but to prevent them; not for attack, but for defense" (*Le Pégou*, 2 Pist. & D., 51).

(**c**.) None of the questions in the standing interrogatories was designed to elicit an answer as to whether the ship carried any dispatch of or to the Spanish government; but the whole of the papers on board the ship, including the mails, were seized and delivered over to the captors, and no such message appeared amongst them. There has been no contention, hitherto, that the ship contravened the provision in this regard.

(**d**.) There was no question in the standing interrogatories on the subject of coal. But there was no finding below that the ship carried more coal than was reasonably required for her voyage.

(**e**.) Merchant vessels previously captured and brought into ports, on or before April 26th, are not expressly, like certain other classes of ships, excluded from the benefits of the proclamation, and hence must be deemed included in it.

The conclusions upon this branch of the argument are (1) that the proclamation took effect from its date; (2) that the *Panama* was within its plain terms; (3) that she was not amongst the classes of vessels in terms excluded from its benefits, and (4) that in the circumstances, she is not to be impliedly excluded from it, but on the contrary is entitled to the immunity it accords, and that accordingly her proceeds should be restored.

II.

If, notwithstanding the above considerations, the decision must be that the immunity granted by the proclamation was designed to relate to enemy ships in our ports on the outbreak of war, instead of to those in our ports on April 26th, when it was issued, then it should be deemed to relate back to and including April 20th, the date the Panama sailed.

Just when the war in fact began would be difficult to say. The point has been discussed in the brief for the *Buena Ventura*.

Assuming, however, for this argument that, in view of the declaration by Congress, it must be taken that a state of war existed as early as April 21st, then it must logically follow that it existed on the 20th also. The congressional statement that war existed on the 21st does not preclude an inquiry as to whether it did not exist on the 20th.

The immediate cause of hostilities was the joint resolution of April 20th (*ante*, p. 6).

It seems plain that nothing constituting an act of war was done on the 21st which did not find its counterpart in what occurred on the 20th.

On that day the resolution was communicated to the Spanish Minister in Washington, who at once demanded and received his passports.

It was also on the same date sent as an open cable message to Spain. The refusal of Spain to receive the resolution on the 21st was not war; nor was it so warlike as our act in passing and sending it on the 20th.

The remark in Signor Gullon's letter to Mr. Woodford of April 21st that the resolution "is equivalent to an evident declaration of war," and the statement that the Spanish Minister at Washington had been withdrawn in consequence of it seems to treat our actions of April 20th as amounting to a declaration of war. It must be conceded that the resolution was, of itself, distinctly

hostile. The concluding sentence of Mr. Sherman's message of April 20th even announces when hostilities are to begin:

"If by the hour of noon on Saturday next, the 23d of April, instant, there be not communicated to this Government by that of Spain a full and satisfactory response to this demand and resolution whereby the ends of peace in Cuba shall be assured, the President will proceed without further notice to use the power and authority enjoined and conferred upon him by the said joint resolution to such extent as may be necessary to carry the same into effect."

The despatch of this message, after the Government understood, from the action of the resident Minister, that the demand made in it could not be accepted, in that form, by Spain, may have been regarded by Congress as amounting to a declaration to Spain that hostilities would be commenced three days later. In that view it may be regarded as a declaration of war, with notice of the time hostilities would begin.

It is not, however, a specific declaration of war, or at least would probably not be so regarded if the resolution of April 25th had not announced that war existed on the 21st. But if that declaration is conclusive of the fact, it appears logically to lead right back to the resolution and commmunications of April 20th as the beginning of war, and necessarily to make that a day of the war. For there is no substantial legal difference between the acts committed on those two days which would justify a court in saying the 20th was not a day of war if the 21st was such a day.

And if the 20th was a day of war, and the proclamation relates back to the beginning of war, it should protect the *Panama* because she sailed on that day.

III.

The steamer was exempt from capture by and under the terms of the sixth section of the proclamation of April 26, 1898.

This section provided:

"6. The right of search is to be exercised with strict regard for the rights of neutrals, and *the voyages of mail steamers are not to be interfered with* except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade."

The evidence and the test affidavits show that the *Panama* was a mail steamer, having a contract with the Spanish government for the carriage of mails, and was, by a specific provision of its contract, required to be armed for their protection.

The United States placed its mails on the steamer in New York on April 20th.

This also must have been pursuant to some contract between the shipowners and our own government.

The shipment of the United States mails by the *Panama* at New York is clearly proved.

The log under that date states the fact that the ship "sailed from New York to Havana at 2:30, *with mails*, pilot and passengers aboard." It further states, under date of April 25th: "At 11:15 the officer asked for the key of the mail room, which was given him." And the master (in Ans. to the 20th Int.) testified: "All the papers and *mail* of the ship were delivered to the prize master; none was delivered to anybody else."

It was stated in the test affidavit to be a part of the ship's usual business, in her trade, to carry the mails between ports of the United States, Cuba, Mexico and South America (p. 5).

The Post Office Department in New York, in the Post Office notice published in the newspapers on April 20th (Appendix E, *post*, p. 45), advertised the act that mails for Mexico would be dispatched on that

day per S. S. *Panama*. And if the Court had not denied the motion for further proof, the claimant could have shown by the Postmaster at New York, also, that the United States mails were actually dispatched by the *Panama* (*Correspondence with Postmaster, Appendix E, pp.* 46, 47).

The language of this section of the proclamation does not exclude its application to mail steamers under the Spanish flag, nor is such an exclusion to be implied.

Under the principles to be applied in the interpretation of executive relaxations of belligerent rights, mail vessels under the Spanish flag should be deemed to be within this section if the words will admit of that interpretation.

The construction of the section must be as liberal and favorable to the Spanish belligerent as the words will admit of.

If it had been intended to have this privilege apply to neutral vessels only, it would presumably have been so stated. To exclude the *Panama* from the privileges accorded to mail steamers under this section would be, in effect, to say that the President meant to grant immunity to neutral vessels carrying the mails of other nations, but to have a vessel carrying our own mails captured, after it had deliberately, pursuant to contract, and at the threshold of the war, placed them upon such vessel.

The shipment of mails on the *Panama* by the authority of and under some form of contract with the United States on the 20th of April, at the outset of the war, implied an obligation on the part of the Government to permit the vessel to proceed to her ultimate destination. That destination, according to the clearance and the evidence, was a port in Mexico, a neutral State Having instituted a blockade of the Port of Havana, to which the vessel was first bound, it was proper to prevent her from entering there; but this of itself was no bar to her proceeding to her Mexican destination.

The outbreak of war during the voyage should not be held to justify the revocation of the contract between the Government and the steamer for the carriage of the mails to Mexico, and the capture of the ship after she had sailed upon the voyage in reliance upon the contract, and had

partly performed and fulfilled it. Sailing with the United States mails, and presumably under a mail flag, the vessel was to a certain extent in the public service of the United States. She was encouraged by the act of the Government to place herself in a position which proved to be one of danger, and accordingly had special claims upon the clemency of the Executive.

The strongest reasons exist for granting immunity to a vessel in her situation. The proclamation should be deemed to extend to her case unless she is necessarily excluded from it by its expressed terms.

The *Panama* is not excluded from the immunity granted under this section by carrying contraband, or attempting to violate the blockade.

Her cargo has been sold by the government, and no contraband was found amongst it. That she was not attempting to violate the blockade is manifest from her immediate surrender, without resistance, to the *Mangrove*. The District Judge, who examined the large mass of documents found aboard the vessel, only a small proportion of which have been certified here, found no ground for condemning the ship, except that she was enemy's property.

IV.

If the facts in connection with the defense of immunity by reason of the mail contract be considered as in doubt on the preparatory evidence, or if the terms of the mail contract between the shipowners and the Spanish Government are not sufficiently proved, the Court should order further proof.

The rule with regard to further proofs is stated by Mr. Justice Story in his essay on the *Practice in Prize Cases* (1 Wheat., Appendix, pp. 494, 504) as follows:

"The most ordinary cases of further proof are where the cause appears doubtful upon the original papers and

the answers to the standing interrogatories; and in such cases, if the parties have conducted themselves with good faith, and the error or deficiency may be referred to honest ignorance or mistake, the court will indulge them with time to supply the defects by the introduction of new evidence. But further proof is in no case a matter of right, and rests in the sound discretion of the Court. Further proof is in all cases necessary, * * * where the defects of the papers, the conduct of the parties, the nature of the voyage, or the original evidence in general, induces any doubt of the proprietary interest, the legality of the trade or the integrity of the transaction."

Further proof may be allowed upon appeal, as well as in the trial Court. This Court has frequently ordered new proofs where the right disposition of the cause was left in doubt by the record (The *Mary*, 9 Cranch, 126, 140; The *Frances*, 8 Cranch, 354; 9 do., 183; The *Venus*, 1 Wheat., 112; The *London Packet*, 2 Wheat., 372; The *Sally Magee*, 3 Wall., 451).

V.

The restoration of the ship should be accompanied by damages.

Every marine capture is at the peril of the captors, who must show just grounds for the detention or condemnation of the ship, or be liable for damages (The *Resolution*, 2 Dall., 1; The *Grand Sachem*, 3 Dall., 333; The *Charming Betsy*, 2 Cranch, 64; *Maley* v. *Chattuck*, 3 Cranch, 458; The *Amiable Nancy*, 3 Wheat., 546; *British Consul* v. *Thompson*, Bee., 142). If, however, there was probable cause for the capture or the subsequent detention, it is proper to submit the cause for adjudication before the prize tribunal, and no damages will be recoverable though the Court should acquit without the formality of ordering further proof (The *Olinde Rodrigues*, 174 U. S., 510; The *George*, 1 Mason, 26).

The question of damages in the present case will depend

upon the ground on which the restoration, if decreed, is placed.

If the Court be of opinion that the capture without previous notification of war was premature, and not in accordance with recent practices, the original taking would amount to a trespass.

If the ship is ordered to be restored because she is exempt from condemnation under the terms of the President's proclamation, it would seem that the detention of the ship subsequent to the proclamation, and the wrongful continuance of the prize proceedings should be held to be at the risk of the captors, and that the great damages suffered by the claimant on account of the condemnation and sale of the ship far below her real value, and for the loss of her use, &c., should in justice be made good to them.

Last Point.

The decree of the Court below should be reversed and proceeds of the ship should be restored with damages and costs.

New York, October 30, 1899.

Respectfully submitted,

CONVERS & KIRLIN,
Proctors for the Claimant-Appellant.

J. PARKER KIRLIN,
Advocate.

Appendix A.

I.

Declaration of Her Majesty, dated March 28, 1854, with reference to Neutrals and Letters of Marque.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, having been compelled to take up arms in support of an Ally, is desirous of rendering the war as little onerous as possible to the Powers with whom she remains at peace.

To preserve the commerce of Neutrals from all unnecessary obstruction, Her Majesty is willing for the present to waive a part of the belligerent rights appertaining to her by the Law of Nations.

It is impossible for Her Majesty to forego the exercise of her right of seizing articles contraband of war, and of preventing Neutrals from bearing the Enemy's despatches, and she must maintain the right of a belligerent to prevent Neutrals from breaking any effective blockade which may be established with an adequate force against the Enemy's forts, harbours, or coasts.

But Her Majesty will waive the right of seizing Enemy's property laden on board a neutral vessel, unless it be contraband of war.

It is not Her Majesty's intention to claim the confiscation of neutral property, not being contraband of war, found on board Enemy's ships; and Her Majesty further declares, that being anxious to lessen as much as possible the evils of war, and to restrict its operations to the regularly organised forces of the country, it is not her present intention to issue Letters of Marque for the commissioning of Privateers.

Westminster, March 28, 1854.

(Holland, Manual of Naval Prize Law, p. 119).

Appendix B.

At the Court at Buckingham Palace,
the 29th day of March, 1854.
Present,
The Queen's most Excellent Majesty in Council.

Her Majesty, being compelled to declare war against his Imperial Majesty the Emperor of all the Russias, and being desirous to lessen as much as possible the evils thereof, is pleased by and with the advice of her Privy Council, to order, and it is hereby ordered, that Russian merchant vessels, in any ports or places within her Majesty's dominions, shall be allowed until the tenth day of May, next, six weeks from date hereof, for loading their cargoes and departing from such ports or places; and that such Russian Merchant Vessels, if met at sea by any of her Majesty's ships, shall be permitted to continue their voyage, if on examination of their papers it shall appear that their cargoes were taken on board before the expiration of the above term: Provided, that nothing herein contained shall extend or be taken to extend to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any despatch of or to the Russian Government.

And it is hereby further ordered by her Majesty, by and with the advice of her Privy Council as aforesaid, that any Russian merchant vessel which, prior to the date of this order, shall have sailed from any foreign port bound for any port or place in her Majesty's dominions, shall be permitted to enter such port or place, and to discharge her cargo, and afterwards forthwith to depart without molestation; and that any such vessel, if met at sea by any of her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.

And the right honourable the Lords Commissioners of her Majesty's Treasury, the Lords Commissioners of the Admiralty, and the Lord Warden of the Cinque Ports, are to give the necessary directions herein as to them may respectively appertain.

C. C. GREVILLE.

Appendix C.

FRENCH PROCLAMATION OF MARCH 27, 1854.

ART. 1er. Un delai de six semaines à partir de ce jour est accordé aux navires de commerce russes pour sortir des ports français.

En conséquence, les navires de commerce russes, qui se trouvent actuellement dans nos ports, ou ceux qui, étant sortis des ports russes antérieurement à la déclaration de guerre, entreront dans les ports français, pourront y sejourner et compléter leur chargement jusqu'au neuf mai inclusivement.

ART. 2. Ceux de ces navires qui viendraient à être capturé par les croiseurs français aprés leur sortie des ports de l'empire, seront relâchés, s'ils établissent, par leurs papiers de bord qu'ils se rendent directement à leur port de destination, et qu'ils n'ont pu encore y parvenir.

Le ministre des affaires étrangères.

DROUYN DE LHUYS.

(Pistoye et Duverdy, Des Prises Maritimes II., 467–8).

Appendix D.

RUSSIAN PROCLAMATION OF APRIL 19, 1854.

(*Avis du ministre des finances de Russie No. 4 de la Gazette du Commerce du 19 avril.*)

Prenant en considération les déclarations des gouvernements anglais et français, le gouvernement impérial dans son désir sincère d'écarter autant que possible des particuliers les conséquences désastreuses de la guerre, a arrêté les règles suivantes:

Un delai de six semaines est accordé aux navires de commerce anglais et français qui se trouvent dans nos ports pour effectuer leur chargement et faire voile sans empêchement pour l' étranger. Dans les ports de la mer Noire, de la mer d'Azoff et de la mer Baltique ce delai sera compté a partir du 25 avril courant: et dans les ports de la mer Blanche à partir du jour où la navigation aura été ouverte dans chacun d'eux.

Les navires de commerce anglais et français qui après être sortis de nos ports seront rencontrés en mer par nos croiseurs, même après l'expiration du delai fixé, en obtiendront la permission de continuer leur voyage du moment que l'examen de leurs papiers de bord aura prouvé que leur cargaison a été embarqué avant l'expiration de ce delai.

(Pistoye et Duverdy II, 471.)

Appendix E.

I.

(*N. Y. Tribune*, Wednesday, April 26, 1898.)

"POST OFFICE NOTICE.

"(Should be read daily by all interested, as changes may occur at any time.)

"Foreign mails for the week ending April 23, 1898, will close (promptly in all cases) at the general post office as follows:

Parcels post mails close one hour earlier than closing time shown below.

"TRANSATLANTIC MAILS.

"WEDNESDAY—At 9 A. M. (supplementary 10.30 A. M., for Europe), per S.S. Majestic, via Queenstown; at 10 A. M. for Europe per S.S. Kensington via Southampton (letters must be addressed 'per Kensington'). * * *

"MAILS FOR SOUTH AND CENTRAL AMERICA, WEST INDIES, ETC.

"WEDNESDAY—At 1 A. M. for Jamaica per steamer from Philadelphia; at 2.30 A. M. for Brazil and La Plata countries via Rio Janeiro per S.S. Dalecarlia from Philadelphia (letters must be directed 'per Dalecarlia'); at 11 A. M. for Progresso per S. S. *Panama* (letters for other parts of Mexico must be directed 'per Panama); at 12 M. (supplementary, 1 P. M. for Central America, &c.); * * *

"TRANSATLANTIC MAILS.

"Mails for China, Japan and Havana per S.S. City of Rio Janeiro (from San Francisco) close here daily up to April 24th at 6.30 A. M. * * *

"CORNELIUS VAN COTT,
"Postmaster.

"POST OFFICE, NEW YORK, N. Y.

"April 25, 1898."

II.

(Copy.)

NEW YORK, Oct. 18, 1899.

Hon. CORNELIUS VAN COTT,
Postmaster, New York City.

S/S *Panama.*

Dear Sir:

Will you kindly inform us whether the steamship *Panama*, which sailed from New York, April 20th, 1898, and was subsequently captured by the fleet engaged in the blockade of Havana, on or about April 25th, 1898, carried the United States mail? Will you also kindly inform us, if possible, what disposition was made of her mails after her capture?

Yours faithfully,
CONVERS & KIRLIN.

III.

(Copy.)

Indexed.—"S. S. 'Panama,' Mail of."

POST OFFICE, NEW YORK, N. Y.
Second Division, Mailing and Distribution,
Office of Supt. of Mails,
October 20th, 1899.

Messrs. CONVERS and KIRLIN,
5 Beekman St.,
New York, N. Y.

Gentlemen:

In reply to your letter of the 18th instant I have to inform you that the S. S. "Panama" of the Spanish Transatlantic Line carried mail from this office on the trip referred to. She was captured off the coast of Cuba and it is presumed that the mail aboard was sent to the Dead Letter Office, Washington, D. C. This office received similar inquiries at the time regarding the fate of the mail in question and tried to ascertain exactly how it had been disposed of but was not able to elicit any official information on the subject.

Very respectfully,
C. VAN COTT,
Postmaster.
per E. M. MORGAN,
Asst. P. M.

A

Brief of Case

Filed Oct 30, 1899.

In the Supreme Court of the United States.

October Term, 1899.

THE SPEARING LUMBER COMPANY, Claimant, Quevedo, Claimant, appellant,
v.
THE UNITED STATES.
No. 120.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES AND THE APPELLEE.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE STEAMSHIP PANAMA, MANUEL Quevedo, claimant, appellant, *v.* THE UNITED STATES. } No. 127.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES AND THE CAPTORS.

In this prize cause the libel (Rec., p. 1), claim, and test affidavit (pp. 4–7) and the depositions *in preparatorio* of the master (pp. 29–33), supercargo (pp. 22–25), and chief engineer (pp. 26–29) show without dispute that the *Panama* was a Spanish merchant vessel of about 1,400 tons, manned by a crew numbering 71, including the captain, all Spaniards, owned by the Spanish corporation, the Compañía Transatlántica, of Barcelona, Spain, sailing under the Spanish flag and royal patent, and for a num-

ber of years had been engaged in carrying passengers, cargoes, and mails between ports of the United States, Cuba, Mexico, and South America on regular voyages, which usually began either at Havana, and thence proceeding to New York, terminated at Vera Cruz or Progreso, Mexico (p. 23), or began at New York and ended, by way of Havana, at Vera Cruz (p. 30); that the vessel carried certain mounted guns and small arms for her own defense under a marine mail-service contract with the Spanish Government, by which, in case of war, that Government was entitled to take over for naval-reserve purposes this and other vessels of the company upon an appraised valuation; that she sailed from New York for Havana about 2 o'clock on April 20, 1898, having taken on board there a general cargo, the production and manufacture of the United States, to be delivered at Havana, Progreso, and Vera Cruz at the risk of the shippers (pp. 23, 31), and consigned to residents and presumptive citizens of Mexico or to parties in Havana (opinion of the court, p. 42), and that she was captured about 25 miles from the Morro of Havana at 6 o'clock or thereabouts on the afternoon of April 25 by the United States steamship *Mangrove*, the *Indiana* and the *Wilmington* being in sight at the time (p. 22). There were 29 passengers on board, mostly destined for Havana, and all Spaniards but one, but there were no officers, soldiers, or sailors in the military or naval service of the enemy on board.

There was perhaps no real question in the case as to blockade, spoliation of papers, or contraband. On the

latter subject, however, the only passenger examined, (p. 34), a Spanish subject, records a report among the passengers that the cargo contained arms and ammunition, which had been thrown overboard before the capture. This witness says that on the night of April 24, by the captain's orders, all lights, including the side lights, were put out, and that during the voyage a man was stationed in the topmast with a glass, who reported to the captain every vessel arriving in sight.

The vessel was taken to Key West for adjudication, and after due proceedings the court condemned her as lawful prize (p. 9) upon the ground that she was enemy property and captured upon the high seas after the commencement of a state of war. The decree restored to the claimants part of the cargo, title to which had not passed from citizens of the United States or from neutral ownership; as to other parts of the cargo, concerning which the question of ownership was not clear, allowed time for further proof (pp. 9, 10). The portions of cargo not ultimately restored on further proof clearly will follow the fate of the vessel. (The *Miguel Jover* and *Catalina*, 87 Fed. Rep., 927, 932.) Subsequently, the vessel and such portions of the cargo as were not restored, or as to which adjudication was not suspended for further proof, were under the statute transferred to the New York district for sale (p. 14), with the result (not appearing in the record) that the vessel sold for $41,000, and the cargo, so far as condemned, for $14,523.12. The case is now before the court on appeal by the claimants.

ARGUMENT.

The question is purely one of enemy property and the exemption asserted to be conferred by the President's proclamation of April 26, 1898, the text of which is as follows:

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA:

A PROCLAMATION.

Whereas by an act of Congress approved April 25, 1898, it is declared that war exists, and that war has existed since the 21st day of April, A. D. 1898, including said day, between the United States of America and the Kingdom of Spain; and

Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the Declaration of Paris;

Now, therefore, I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim:

1. The neutral flag covers enemy's goods, with the exception of contraband of war.

2. Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag.

3. Blockades in order to be binding must be effective.

4. Spanish merchant vessels, in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and de-

parting from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term: Provided, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any despatch of or to the Spanish Government.

5. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo, and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, on the twenty-sixth day of April, in the year of our Lord [SEAL.] one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

WILLIAM MCKINLEY.

By the President:

ALVEY A. ADEE,

Acting Secretary of State.

The argument on behalf of claimants is that, since there was no formal proclamation or declaration of war before the *Panama* had sailed, or because she had left the United States at so recent a date relative to her seizure, she should, under an equitable view of the proclamation or on what is supposed to be the unexpressed intention, be considered as exempted from the liability of all enemy's property to capture. This is in reality a request to the court to find, in the supposed inherent equities of the case and the hardship of the legal rule, valid reasons for reversing the decree below; reasons which (if they exist) might be addressed to executive grace before libel filed or perhaps (though not hopefully) at any later stage before condemnation, but which should not, we confidently maintain, receive the sanction of the court.

It is not necessary to detain the court with a discussion of the foundations of prize law, the principles of which have been clearly established and the boundaries accurately defined by the great English authorities and in the learned judgments of this court. It springs from the rights of belligerents, and while "on the one hand the growth of commerce and civilization have a uniform tendency to render less tolerable the extreme exercise of what are called belligerent rights, and gradually to introduce modifications, * * * on the other hand the material changes of modern times, such as the adoption of steam navigation, * * * the employment of railways, electric telegraphs, etc., * * * require a corresponding increase of vigilance on the part of belligerents on the high seas, and inevitably give rise to the claim by them of new

rights." (Lushington's Naval Prize Law, Introduction, pp. ix, x.)

Dr. Lushington in this passage states in a note, as an illustration of the softening process of civilization, that in the Austro-Italian war of 1866, for the first time in naval warfare, merchant vessels of the enemy were spared on both sides, but that this moderation was secured by special agreement between the two belligerents under which, and the rules of the Treaty of Paris, private property of the enemy at sea was as completely exempt from hostile capture as private property on land. The claim for moderation is more particularly urged in law (however it may be in diplomacy and morals) in favor of neutral rights rather than of a new and more liberal attitude to the enemy; and it is the gist of the subject (which is a harsh one) that belligerent rights are to be strictly and even rigorously enforced; and the primary rule without exception, unless specially provided (as by proclamation or a licensing cartel), is that enemy property afloat on the high seas at the time the beginning of a state of war is fixed is valid prize. For this no citation of authorities is requisite, but the following statements are approved by the high authority from which they proceed: "When two powers are at war, they have a right to make prizes of ships, goods, and effects of each other upon the high seas. Whatever is the property of the enemy may be acquired by capture at sea * * *." (Letter from Sir William Scott and Sir John Nicholl to Mr. Jay; Pratt's ed. Justice Story's Notes on the Principles and Practice of Prize Courts, p. 3.) "Nor can an enemy interpose a claim, unless under the protection of

a flag of truce, a cartel, license, pass, treaty, or some other act of the public authority suspending his hostile character." (Ib., p. 21.) The commerce of the enemy has in all ages been regarded as the legitimate prize of war, and the statement of the King's advocate, "There is no such thing as a war for arms and a peace for commerce," is accepted as proper and necessary. (*Potts* v. *Bell*, 8 Term Rep., 548.) Beside the just rights of reprisal and aggrandizement, one reason for the rule has an ethical result, at least, for it tends to end the war more quickly.

Now, to illustrate how far in practice the more humane notions of modern times have affected the persons and property of the enemy, it may be stated that the court has ruled that war gives the sovereign the right to take the persons and confiscate the property of the enemy wherever found, on land as well as at sea, and that the mitigation of the rigid rule might more or less affect the exercise of the right, but could not impair the right itself. (*Brown* v. *United States*, 8 Cranch, 110; 1 Kent Com., 59.) Capture of enemy property on the high seas has not been mitigated in practice, and the diplomatic policy and historic attitude of the United States in favor of the exemption of all private property at sea can not affect the determination of the law as it is, nor can the abolition by a recent act of Congress of prize money to naval captors affect it as showing a similar tendency. The English and American relaxations by executive act, as indicated *ante*, mostly concern neutrals. (Declaration of the Queen, of March 28, 1854; Story's Notes, etc., p. 148; the President's Proclamation, *supra*.)

To sustain, therefore, a claim on behalf of enemy property, a clear, definite, and express exemption must be shown, and that does not exist here. The contrary view is sought to be interpreted into the proclamation. Vattel, who may be appropriately cited on a question on the law of nations, says tersely: "It is not allowable to interpret what has no need of interpretation." (Lib. 2, c. 17, sec. 262.) The words in their natural signification, if free from ambiguity and doubt, declare the meaning of an instrument and the thought which it expresses, and courts have not the right to add to or take away from that meaning. This is, of course, elementary, and is clearly stated in *Thornley* v. *United States* (113 U. S., 310); *Lake Co. Commrs.* v. *Rollins* (130 U. S., 662); *Newell* v. *People* (3 Seld. (N. Y.), 97). Indeed, the claim based upon the proclamation is most general and even vague in its nature, for it can not be fortified from the proclamation even by inference or fair intendment.

It is now necessary to consider the facts and keep in mind the respective dates in connection with the language of article 4 of the proclamation.

The *Panama* sailed from New York about 2 p. m. on April 20, 1898; on April 22 the President, by proclamation, declared Havana and certain ports and portions of the north coast of Cuba to be under blockade; on April 25 Congress declared war, and retroactively fixed the date of its beginning on April 21. On the same date, that is on April 25, about 6 p. m., the *Panama* was captured on the high seas, and on April 26 the proclamation above set out was signed and promulgated. The language of article 4 of the proclamation is: "Spanish merchant

vessels in any ports or places within the United States shall be allowed until May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage if upon examination of their papers it shall appear that their cargoes were taken on board before the expiration of the above term." * * * This obviously means that "such vessels" should be those which had not left the United States when war began, and were not, after it began, taken on the high seas. From all this it is very clear that a Spanish vessel proceeding from a harbor of the United States before April 26, or at the very most before April 21, and captured on the high seas, is not exempt by the proclamation and became good prize.

By modern practice war may begin and "may lawfully exist without a declaration on either side. It is so laid down by the best writers on the law of nations." (Lord Stowell in *The Eliza Ann*, 1 Dod., 247.)

Modern treaty stipulations among European nations provide that a rupture of pacific relations takes place at the date of the recall or dismissal of ambassadors. (De Marten's Supp., VII, 213 and *passim*.)

Certain Government acts of an unjust and hostile character have been regarded as equivalent to a declaration of war and the subsequent formal declaration as ratifying and confirming acts done in consequence of the state of war in fact. (*The Herstelder*, 1 Rob., 114; *The Boedes Lust*, 5 Rob., 246.)

In the United States it is one of the constitutional functions of Congress to declare war, and the Spanish

war was duly declared by the act referred to. The act is in terms retroactive and there can be no doubt of its validity as such. Whether the proclamation also has a retroactive effect, and granting on April 26 until May 21 the right of enemy vessels in our ports at the outbreak of the war to take on cargo and proceed without molestation implies necessarily that the five days between April 21 and April 26 are included in the exemption to make up the normal period of thirty days from April 21 to May 21, is another question. That was not expressed; while in the British order in council in the Crimean war the time was made definite, for the language is that "Russian merchant vessels in any ports or places within Her Majesty's dominion shall be allowed until the 10th day of May next, six weeks from *the date hereof*, for loading their cargoes and departing." But the Government contended unsuccessfully in reference to other vessels in the court below that the date of the proclamation fixed the beginning of the period of exemption, the court, on the other hand, considering that the President did not intend to change the thirty days of grace given to neutral vessels in the blockade proclamation of April 22 to twenty-five days in this proclamation, and holding, therefore, that the proclamation was so far retroactive, in which view the Government acquiesced and agreed to the dismissal of the appeals taken in the said cases.

There is a precedent for holding the date of the proclamation to be controlling in the British Order in Council of March 29, 1854 (*The Phœnix*, Spink's Prize Cases, 1), which is authority on the modern practice

and on the strict construction of the exempting language of a proclamation. The similar Spanish declaration was dated April 24, so that by construing the President's proclamation to date from April 21, we gave to Spanish vessels a privilege not reciprocated. (1 Kent, p. 58.) Another reason for leaning to the construction of this provision against the vessels affected, rather than in favor of them, was that to permit them to proceed, although not within the express terms of the proclamation, war existing when they were captured, was a violation of the rule against trading with the enemy. (1 Kent, p. 66; *The Rapid*, 8 Cr., 153.)

This case, however, is much stronger than the appeals in question, which were dismissed. The utmost precedent date to which the proclamation could relate was April 21, and the *Panama* left port on April 20. This is conclusive of the question. Outside the field of law this period of one day may be regarded as a narrow basis on which to rest the distinction, and the result might be considered technical and harsh, but prize law lies within narrow confines, and necessarily from the nature of the subject and the exigencies of belligerent rights is extremely technical and essentially rigorous. Besides, the rule of not allowing a concession or exemption unless within the express terms of the instrument is a general rule of all law; and, further, the question arises, How far shall you be permitted to go back? If one day, why not two or ten? Ignorance of the state of war, even if had existed, could not excuse the vessel. In England very ancient crown grants for the benefit of

the lord high admiral made prize of all captures of all ships and goods coming or already come into the ports or roads of England and Ireland by stress of weather or other accident, or by mistake of port, *or by ignorance, not knowing of the war.* (Story's Notes, etc., p. 118.)

Now, as a matter of fact, the breach of friendly relations with Spain (our minister to Spain and the Spanish minister at this capital were recalled on April 21, 1898), the hostile condition in fact, and the imminence of war were well known to the owners and master of this vessel, and they also knew that by modern practice they were most probably safe in port and would eventually be protected by just such a proclamation as was issued on April 26. They chose to take the risks and make the venture, and that they did so is shown by the conduct of the vessel on her voyage and as she approached the Cuban coast, testified to by the only passenger brought before the prize commissioners.

Again, the relation of the vessel to the Spanish Government is an important element in the case. Such an auxiliary cruiser (*in posse*) would be much more properly subject to the rigors of prize law in a really doubtful case than a merchant vessel pure and simple. Can it be doubted that, if the *Panama* had been successful in eluding the *Mangrove* and our other vessels of war, she would have reappeared upon the seas in the Spanish national service? In a case before Lord Stowell, where it appeared that the vessel had been engaged in the military service of the enemy under appointment of the minister of marine, it was held as sufficient proof of its

setting forth as a vessel of war. (*The Santa Brigada*, 3 Rob., 56; *The Ceylon*, 1 Dod., 105.) The circumstances here undoubtedly suggest an approach to this state of facts, and an intention to enter the Spanish service and use the Hontoria armament in accordance with the terms of the company's contract with the Crown.

Finally, as to insurance, one point remains to be considered. It appears that the real parties in interest as to the vessel are neutral insurers (Rec., p. 7); but if they took a war risk they will properly respond to the owner's loss, and if they did not take such risk, either by express language or by necessary construction of law, they are not liable and the burden remains upon the enemy owner where it properly belongs.

We therefore conclude, and respectfully submit that the decree of the prize court condemning the vessel should be affirmed.

HENRY M. HOYT,
Assistant Attorney-General
For the United States.

JOSEPH K. MCCAMMON,
JAMES H. HAYDEN,
Of Counsel for the Captors.

No. 127.

Supreme Court of the United States.

No. 127.—October Term, 1899.

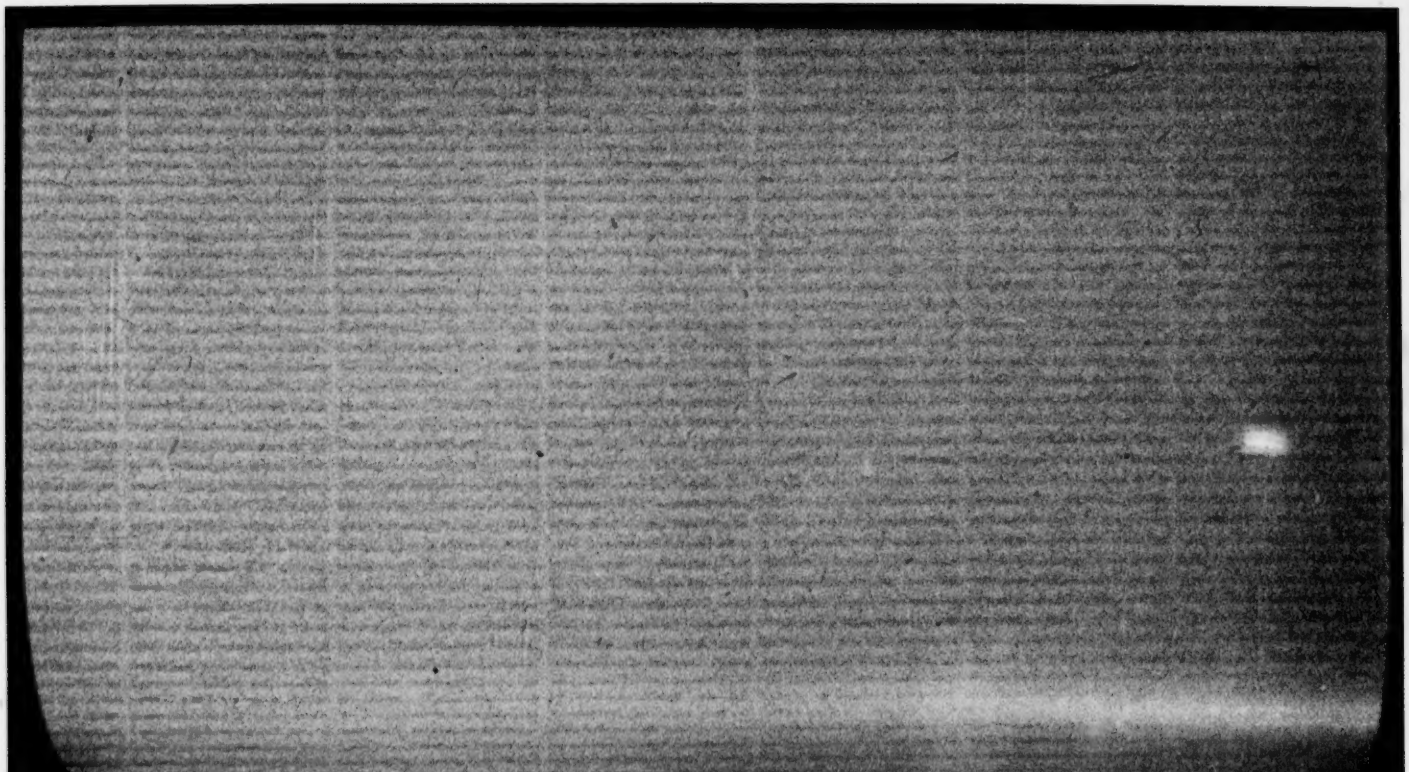
THE STEAMSHIP "PANAMA," MANUEL QUEVEDO, CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

Extract from Exhibit A.



[ORIGINAL.]

APÉNDICE NÚM. 2.

COPIA DEL CONTRATO

PARA EL ESTABLECIMIENTO DE SERVICIOS POSTALES MARÍTIMOS, CELEBRADO CON LA COMPAÑIA TRANSATLÁNTICA ESPAÑOLA EN CONSEJO DE MINISTROS EN 17 DE NOVIEMBRE DE 1886, Y ACEPTADO POR LA COMPAÑIA EN 18 DEL MISMO MES

Objeto del contrato

1

El contratista que tome á su cargo este servicio se compromete á desempeñar los de comunicaciones marítimas que se determinan en el art. 2.°, con buques de vapor que reunan las condiciones que más adelante se detallan, á conducir á bordo de los mismos, con destino á los puertos indicados en dicho art. 2.°, la correspondencia pública y de oficio y el pasaje y carga oficial; y por último, á prestar con dichos buques los servicios auxiliares de guerra de que sean susceptibles, subordinándose en todo á las prescripciones de este pliego.

2

Los servicios de comunicaciones marítimas á que se refiere el articulo anterior serán los siguientes:

A. Treinta y seis viajes de Cádiz y Santander á las Antillas. Los que partan de Santander tendrán combinación con algunos puertos del Norte de Europa, y los que mensualmente partan de Cádiz, podrán hacer escala en Las Palmas de Gran Canarias, debiendo extenderse todos á New York y Veracruz, y uno de cada mes á la Guaira, Puerto Cabello, Sabanilla, Cartagena y Colón.

Abierto el Canal de Panamá, el contratista extenderá hasta Guayaquil una de las expediciones mensules de que trata el párrafo anterior.

También establecerá desde luego combinaciones mensuales: en el Pacífico (utilizando el ferrocarril de Panamá), desde Valparaiso á San Francisco, y en el At-

[TRANSLATION.]

APPENDIX No. 2.

COPY OF THE CONTRACT

FOR THE ESTABLISHMENT OF MARITIME POSTAL SERVICES, CONCLUDED WITH THE COMPAÑIA TRANSATLÁNTICA ESPAÑOLA IN THE COUNCIL OF MINISTERS OF NOVEMBER 17, 1886, AND ACCEPTED BY THE COMPANY ON THE 18TH OF THE SAID MONTH.

Purposes of the contract.

1

The contractor undertaking this service binds himself to perform that of the maritime communications designated in Article 2, by means of steam vessels that shall meet all the requirements hereinafter set forth; to carry on board of the same, with the ports mentioned in the said Article 2 as destination, private and official correspondence and official passengers and freight; and, lastly, to furnish with said vessels the auxiliary war services to which they are adapted, subject in all things to the provisions of this instrument.

2

The maritime communication service to which the foregoing article refers shall be the following:

A. Thirty-six voyages from Cadiz and Santander to the West Indes. Those starting from Santander shall have connections with some ports of northern Europe and those starting monthly from Cadiz may touch at Las Palmas in the Canaries, all being continued to New York and Vera Cruz, and one voyage each month to La Guaira, Puerto Cabello, Cartagena and Colon.

The Panama Canal once opened, the contractor shall extend one of the monthly voyages referred to in the foregoing paragraph to Guayaquil. He shall also establish at once monthly connections. On the Pacific (utilizing the Panama Railroad), from Valparaiso to San Francisco, and on the Atlantic, from New York to New

lántico, desde New York á New Orleans; de Habana á New Orleans; Habana á Savannah, á Charleston, Georges Town, Baltimore y Filadelfia, y de New York á Boston y Quebec.

B. Trece viajes redondos anuales que arrancando de un puerto de Inglaterra y tocando en los de la Peninsula que determinarán los itinerarios previamente sometidos á la aprobación del Gobierno, partan del puerto de Barcelona para Manila por el Canal de Suez, cada cuatro semanas, y combinaciones en los puertos del itinerario que sean más convenientes para servir, alternando con los viajes directos, el correo de Filipinas que va por via extranjera y para relacionar á España y Filipinas con el Havre, Londres, Amberes, Hamburgo, Marsella, Génova y Nápoles con Kurachee y Bushire en el Golfo Pérsico, Zanzibar y Mozambique, en la costa oriental de Africa, Bombay y Calcuta, Soigon, Sidney y Batavia, Hong-Kong, Shangay, Hyago y Yocohama.

Continuará el servicio de vapores actualmente establecido entre Singapore y Manila, con el fin de que pueda utilzarse alguna de las lineas extranjeras y conducir por ella la correspondencia entre la Peninsula y el Archipiélago Filipino.

El Ministerio de Ultramar determinará oportunamente con cuál de las lineas mencionadas deberá enlazar este servicio, cuidándose de escoger aquella cuyos viajes menos coincidan con los de la linea española, de suerte que, á ser posible, se asegure á nuestras colonias de Asia y Occeania un servicio quincenal de comunicaciones maritimas con la Peninsula.

C. Seis viajes redondos anuales que, arrancando de un puerto de Francia del Mediterráneo ó del Cantábrico, y tocando en los de la Peninsula que se determinarán en los itinerarios oficiales, partan del puerto de Cádiz para el de Buenos Aires, pudiendo hacer las escalas de Santa Cruz de Tenerife, Rio Janeiro, Montevideo y las demás que en dichos itinerarios se determinen.

Estos viajes deberán tener combinaciones en Cádiz con los principales puertos del Mediterráneo, cuando la expedición

Orleans; from Havana to New Orleans; Havana to Savannah, Charleston, Georgetown, Baltimore and Philadelphia, and from New York to Boston and Quebec.

B. Thirteen round trips per year which, starting at a port of England and touching at such ports of the Peninsular as may be designated in the itinerary previously submitted to the approval of the Government, shall be made every four weeks from the port of Barcelona to Manila by way of the Suez Canal, with connections at the ports of the itinerary most convenient to serve (alternating with the direct trips) the Philippines mail carried by a foreign line, and to bring Spain and the Philippines into connection with Havre, London, Antwerp, Hamburg, Marseilles, Genoa and Naples, with Kurachee and with Bushire on the Persian Gulf; Zanzibar and Mozambique, on the eastern coast of Africa, Bombay and Calcutta, Saigon, Sidney and Batavia, Hongkong, Shanghai, Hiogo and Yokohama.

The steamship service now established between Singapore and Manila shall continue in order that some one of the foreign lines may be utilized to carry the mail between the Peninsula and the Philippine Archipelago.

The Ministry of the Colonies shall opportunely determine with which of the lines mentioned this service is to connect, care being taken to select those whose trips least coincide with those of the Spanish line, so that, if possible, our colonies of Asia and Oceanica may be assured a fortnightly service of maritime communication with the Peninsula.

C. Six round trips per year which, starting from a French port on the Mediterranean or the Bay of Biscay, and touching at the ports of the Peninsula that may be designated in the official itineraries, shall run from the port of Cadiz to that of Buenos Ayres, with the right to touch at Santa Cruz de Teneriffe; Rio Janeiro, Montevideo and elsewhere, as the said itineraries may determine.

These trips must have connections at Cadiz with the principal ports of the Mediterranean, when the voyage starts

parta del Cantábrico, y con los del Cantábrico si parte del Mediterráneo.

D. Cuatro viajes redondos al año que en combinaciones con Barcelona, arranquen de Cádiz hasta Fernando Póo y regreso, tocando en Larache, Rabat, Mazagán, Mogador, Las Palmas, Rio de Oro, Cabo Verde, Monrobia ú otras escalas que se determinen en los itinerarios.

E. Veinticuatro viajes anuales entre Málaga y Ceuta, Algeciras, Tánger y Cádiz con prolongación á Larache, Rabat, Mazagán y Mogador, ocho veces al año, completando asi, con los cuatro de Fernando Póo que visitan esto puntos, doce comunicaciones anuales entre ellos y los anteriormente mencionados, y ciento cuatro viajes de Cádiz á Tánger y regreso.

3

El servicio de las Antillas se desempeñará á una marcha media anual por el pomedio de esta linea de

11,50 millas por hora desde que empiece á regia este contrato.

12 millas por hora desde 1.° de Octubre de 1888.

12,50 millas por hora, desde 1.° de Enero de 1893.

Las prolongaciones de esta linea seráu servidas con una velocidad media anual por el promedio de ella de

10 millas por hora.

El servicio de Filipinas será desempeñado á una marcha media anual por el promedio de ésta de

10,15 millas por hora desde el dia en que rija este contrato.

11,15 millas por hora desde 1.° de Junio de 1890.

12,50 millas por hora desde 1.° de Enero de 1895.

La marcha de la linea de Buenos Aires será de 11 millas por hora, la de Fernando Póo de 8 millas, y la de Marruecos de 8,50.

4

El presente contrato empezará á regir desde que se conseda el crédito necesario para su cumplimiento por parte del Estado. Los nuevos servicios de las Antillas y

from the Bay of Biscay, and with those of the Bay of Biscay if it starts from the Mediterranean.

D. Four round trips a year which, having connections with Barcelona, shall run from Cadiz to Fernando Po and return, touching at Larache, Rabat, Mazagan, Mogador, Las Palmas, Rio de Oro, Cape Verde, Monrovia, or elsewhere as the itineraries may determine.

E. Twenty-four round trips per annum between Malaga and Ceuta, Algiers, Tangiers and Cadiz, with extensions to Larache, Rabat, Mazagan, and Mogador, eight times a year, thus making, with the four Fernando Po trips which touch at these ports, twelve yearly communications between them and those previously mentioned, and one hundred and four trips from Cadiz to Tangiers and return.

3

The West Indian service shall be carried out at a mean annual speed over the average of this line of

11.50 miles an hour from the time this contract goes into effect.

12 miles an hour from October 1, 1888.

12.50 miles an hour from January 1, 1893.

The extensions of this line shall be served with a mean annual speed for the average thereof of

10 miles an hour.

The Philippine service shall be effected at a mean annual speed for the average thereof of

10.15 miles an hour from the day this contract goes into effect.

11.15 miles an hour from June 1, 1890.

12.50 miles an hour from January 1, 1895.

The speed of the Buenos Aires line shall be 11 miles an hour; for the Fernando Po 8 miles, and for the Morocco 8.50.

4

This contract shall go into effect whenever the appropriation necessary to insure its performance shall be made by the Government. The new West Indian and

Filipinas se establecerán el dia 1.° de Julio de 1887.

Los de Buenos Aires, Fernando Póo y Marruecos no se inaugurarán hasta 1.° de Diciembre siguiente, á menos que el contratista manifestase estar en posibilidad de plantearlos con anterioridad.

La duración del contrato será de veinte años y deberá considerarse prorrogado si dos años antes de su terminación no hubiese sido denunciado por alguna de las partes. La prórroga tácita no excederá de dos años, al cabo de los cuales el Estado podrá dar por terminado el contrato si asi le conviniere.

5

Como auxilio para la ejecución del contrato, el Estado se obliga á pagar la subvención de 10,18 pesetas en la linea de América, cuyos servicios se designan con la letra *A* en el art. 2.°, y 7,15 en la de Filipinas, designada en el mismo con la *B* por milla de recorrido, y pesetas 0,73 por milla de trayecto servido por combinación en ambas líneas.

Cuando se efectúe la apertura del Canal de Panamá, el Gobierno no debe abonar en la prolongación del ramal de Colón hasta Guayaquil, más que el importe de los derechos del canal.

Por el servicio de Buenos Aires (según el art. 2.° *C*) recibirá el contratista una subvención de 5,93 pesetas por milla.

Por el servicio de Fernando Póo (según el art. 2.° *D*) recibirá el contratista una subvención de 5,93 pesetas por milla.

Por los servicios de Marruecos (según la letra *E* del mismo articulo), una subvención de 5,93 pesetas por milla.

El pago del las subvenciones se verificará mensualmente en la corte por los Ministros de la Gobernación y Ultramar, en cuyos presupuestos se consignará el importe total de la subvención.

Todas las sumas que el Estado ha de satisfacer á la Compañia se pagarán precisamente en metálico y sin deducción ni descuento por ningún concepto.

6

El Gobierno se compromete á no celebrar, mientras dure este contrato, otros que tengan por objeto subvencionar nue-

Philippine services shall be established on the 1st day of July, 1887.

The Buenos Aires, Fernando Po and Morocco services shall not be inaugurated until the 1st of December following, unless the contractor shows he is in a position to establish them before that.

The duration of the contract shall be twenty years, and shall be considered as extended if within two years from the termination thereof notice to the contrary shall not have been given by one of the parties. The tacit extension shall not exceed two years, at the expiration of which the Government may consider the contract as terminated, should it so desire.

5

By way of aiding in the execution of the contract, the Government binds itself to pay a subsidy of 10.18 *pesetas* to the American line, whose services are designated under the letter *A* in Art. 2, and 7.15 to the Philippine line, designated therein under the letter *B*, per mile run, and 0.73 *pesetas* per mile of route served in combination by both lines.

When the opening of the Panama Canal shall be effected, the Government shall not grant for the extension of the branch line from Colon to Guayaquil more than the amount of the canal dues.

For the Buenos Aires service (according to Art. 2, *C*) the contractor shall receive a subsidy of 5.93 *pesetas* per mile.

For the Fernando Po service (according to Art. 2, *D*) the contractor shall receive a subsidy of 5.93 *pesetas* per mile.

The payment of the subsidies shall be made monthly in Madrid by the Ministers of the Interior and the Colonies, whose budgets shall include the total amount of the subvention.

All sums payable by the Government to the Company shall be paid indispensably in coin without any deduction or discount whatsoever.

6

The Government binds itself, during the life of this contract, not to enter into any others having for object the subsidiz-

vas lineas de vapores entre los mismos puntos.

La Compañia concesionaria disfrutará de los privilegios y ventajas que por disposiciones generales se otorguen á la Marina mercante española.

Asimismo no podrá ser sometida á ningún impuesto especial.

Si el Gobierno creyere conveniente aumentar ó disminuir durante el contrato el número de viajes anuales para cualquiera de las lineas establecidas, podrá efectuarlo, quedando el contratista obligado á la variación, y entendiéndose que el auxilio ha de aumentar ó disminuir en su caso, en una parte proporcional al tipo de subvención que para cada linea se señale.

Si la supresión de viajes obligase á la Compañia á retirar ó inutilizar una parte de su material, el Gobierno estará obligado á la correspondiente indemnización.

También podrá el Gobierno prolongar las lineas contratadas. Asimismo tendrá la facultad de suprimir ó añadir nuevos puntos de escala, dentro de aquéllas, sin que tal alteración implique variación en la subvención, aunque haya lugar á la indemnización de que trata el párrafo precendente, si la Compañia tuviese que retirar alguna parte del material.

7

Si al espirar los cinco primeros años del presente contrato la contabilidad de la empresa concesionaria arrojas un excedente anual, después de cubiertas las obligaciones, intereses y reservas que abajo se expresan, el Gobierno podrá exigir que la tercera parte de ese sobrante se invierta en el establecimiento de neuvas lineas, en aumentar la marcha de los vapores, en proporcionar mayor comodidad á los viajeros, ó en mejorar las condiciones del servicio del Estado.

Para apreciar la existencia del sobrante, deberá la Compañia establecer una contabilidad separada, respecto de cada uno de los vapores que estrá obligada á sostener, en cumplimiento del contrato, cuidanto de anotar escrupulosamente los productos é ingresos que rindo el barco, y enfrente de éstos, los gastos siguientes:

1.° Los corrientes de entretenimiento del vapor.

ing of new steamship lines between the same points.

The concessionary Company shall enjoy the privileges and advantages granted by general legal provisions to the Spanish merchant marine. In like manner it shall not be subject to any special tax.

Should the Government deem it advisable to increase or diminish, through the contract term, the number of annual trips on any of the established lines, it may so do, the contractor being bound by the change, and it being understood that the aid shall increase or diminish, as the case may be, proportionately to the class of subsidy designated for each line.

Should the suppression of trips compel the Company to withdraw, or impair any of its property, the Government shall be bound to the corresponding indemnity.

The Government may likewise extend the contract lines. It shall also have the power to suppress or add new way ports within the said lines, without such change implying any change in the subsidy, even though a case for the indemnity of which the foregoing paragraph treats shall arise, through the Company having to withdraw any part of its property.

7

If at the expiration of the first five years of this contract the books of the concessionary Company shall show an annual surplus after the meeting of the obligations, interest and reserve below mentioned, the Government may require the one-third part of such surplus to be invested in the establishment of new lines, in increasing the speed of the steamships, in furnishing greater comforts to travellers, or in improving the conditions of the Government service.

In order to arrive at the amount of the surplus, the Company shall keep separate accounts for each steamship it is bound to maintain in the performance of the contract, taking care to scrupulously note the revenues and receipts of each vessel, and opposite these the following expenses:

1. The current expenses for the maintenance of the steamship.

2.° Una parte proporcional de los gastos generales en la explotación de los servicios contratados.

3.° El 6 por 100 del vapor del barco (según balance), como prima de seguro.

4.° El 5 por 100 del capital del barco y 20 por 100 de su mobiliario, como amortización.

5.° El 5 por 100 del valor de inventario del barco.

6.° El 5 por 100 como fondo de reserva especial de las lineas que deberán ser servidas en ejecución del presente contrato.

7.° Los gastos hechos en concepto de mantenimiento de hombres, carbón, conservación de máquinas, útiles, etc., etc.

La comparación entre los ingresos y estos gastos denunciará el sobrante.

El cálculo de los tantos por ciento mencionados en los núms. 4.° y 6.°, deberá basarse sobre el valor, á justificar por los libros que los buques tuviesen en la época en que fueron dedicados al servicio de las lineas del contrato. El cálculo de la parte proporcional de los gastos generales, deberá establecerse sobre el valor de cada buque, según balance, en relación al de la flota entera de la Compañía.

El Gobierno tendrá en todo tiempo el derecho de examinar los libros de contabilidad del concesionario.

8

Cuando el contratista, para desempeñar los servicios objeto de este contrato, presente adquiridos en el extranjero, quedará relevado del pago de los derechos que correspondan al Estado por su introducción, abanderamiento y matricula, así como de los que correspondan al cargo de cada buque, según su porte. Pero si alguno de estos barcos fuese destinado á otros servicios ó enejenado á otro particular ó Compañía, satisfará entonces los derechos correspondientes á cada uno de los indicados conceptos.

9

Los gastos de otorgamiento de la escritura y de cuatro copias para el Gobierno, serán de cuenta del contratista.

2. A proportional part of the general expenses in the performance of the services contracted for.

3. Six per cent. of the value of the vessel (as per balance sheet) as insurance premium.

4. Five per cent. of the capital of the vessel and twenty per cent. of its furnishings, as amortization.

5. Five per cent. of the inventory value of the vessel.

6. Five per cent. as a special reserve of the lines to be served in the execution of this contract.

7. The amounts expended in the maintenance of men, coal, care of machinery, tools, etc., etc.

The difference between the receipts and the expenses will show the surplus.

The calculation of the percentages mentioned in numbers 4 and 6 should be based upon the value, as shown by the books of the vessels at the time they were put into the service of the lines covered by the contract. The calculation of the proportional part of the general expenses should be based on the value of each vessel, as per the balance sheet, as compared with that of the whole fleet of the Company.

The Government shall have at all times the right to examine the account books of the concessionary.

8

When in order to perform the services to which this contract relates, the contractor shall provide vessels acquired abroad, he shall be exempt from the payment of the duties due the Government for their introduction, flag transfer and registration, as well as of those corresponding to the burden of each vessel, according to capacity. But if any of these vessels should be put to other services or transferred to another individual or company, it shall then pay the corresponding duties in each of the above instances.

9

The costs for executing the instrument and for four copies thereof for the Government shall be payable by the contractor.

Condiciones generales.

10

El Ministerio de Ultramar, de acuerdo con del Marina, formará los intinerarios de todas las lineas y plan de combinaciones; fijará las horas de salida, escala, etc., etc., teniendo en cuenta para la duración de los viajes la marcha y condiciones de los buques destinados á cada servicio.

11

Cuando algún suceso extraordinario, las Leyes sanitarias ó cualquiera otras disposiciones exijan que los buques terminen su viaje en otros puntos que no sean los fijados en este contrato, el arribo excepcional á los indicados puertos se reputará término de viaje para todos los efectos de dichos contratos.

12

Los buques no podrán salir de los puertos españoles, cabezas de las lineas, antes de haber recibido la correspondencia oficial. El Gobierno ó los Gobernadores generales de las provincias y posesiones de Ultramar tendrán la facultad de retardar la salida veinticuatro horas consecutivas, sin abono de indemnización alguna. Si la retardaren por más tiempo, se abonará al contratista la cantidad de 2.500 pesetas por cada medio día comenzado ó doce horas de retraso. La hora de la salida se fijará por el Ministerio de Ultramar.

13

El contratista tendrá siempre dispuesto buque para la salida del correo de los puertos españoles, cabezas de lineas, con dos días de anticipación, reservando en el, á la orden del Gobierno, ó de los Gobernadores generales, respectivamente, dos camarotes de primera clase hasta veinticuatro horas antes de la señalada para la partida.

14

Los buques mientras tengan á bordo la correspondencia oficial, no podrán hacer escala ó arribada en otros puntos que los designados en el presente de condiciones, ó en los que nuevamente se designaren en el caso previsto en al art. 6.°, á no ser ob-

General conditions.

10

The Ministry of the Colonies, by agreement with that of the Navy, shall draw up the itineraries of all the lines and the schedule of connections, set the hours of departure, ports of call, etc., etc., keeping in mind, for the duration of the trips, the speed and conditions of the vessels employed in each service.

11

When some extraordinary event, health regulations or any other legal provisions require vessels to terminate their voyage at points other than those established in this contract, the exceptional putting in to such ports shall be deemed an end of the voyage for all the purposes of said contracts.

12

Vessels shall not leave Spanish ports, starting points of the lines, before receiving the official mail. The Government or the Governors-General of Colonial provinces and possessions shall have the right to delay the sailing twenty-four consecutive hours without granting any indemnity whatsoever. Should they delay it for a longer time, the contractor shall be granted the sum of 2,500 *pesetas* for each half-day begun, or twelve hours of delay. The hour of departure shall be set by the Ministry of the Colonies.

13

The contractor shall have a vessel always ready two days ahead of time, for the departure of mails from Spanish ports, starting points of lines, reserving thereon to the order of the Government or the Governors-General, respectively, two first-class staterooms up to twenty-four hours before the time set for departure.

14

Vessels, while carrying official mail on board, cannot call at or put in to any points other than those designated in this instrument of conditions, or those which may hereafter be designated in the case covered by Art. 6, unless compelled

ligados por fuerzo mayor, cuya circunstancia se acreditará en debida forma.

15

No se consideran como caso de fuerza mayor para los efectos del articulo anterior ni para justificar los retrasos, los que provengan de las circunstancias desfavorables de la mar y vientos generales de proani las averias de máquinas, calderas ó aparejos que puedan experimentar los buques durante su navegación, como no constituyan un accidente extraordinario, y tampoco los que deben imputarse al contratista ó á sus agentes ó empleados, ya provengan de malicia, ya de ignorancia ó negligencia de los mismos.

16

El contratista no podrá ceder ni enajenar este servicio sin la previa autorización del Gobierno.

17

Podrán ser contratistas de este servicio, previa la oportuna adjudicación en los términos que se resuelva por el Ministerio de Ultramar, bien los españoles que por si ó por su legitima representación lo soliciten, bien cualquiera de las diferentes personalidades juridicas que el derecho reconoce, con tal que estén domiciliadas en España.

18

En el caso de ser contratista una sociedad anónima, sus gerentes ó administradores serán nombrados por el Gobierno á propuesta en terna de la junta general de accionistas.

El Gobierno, cuando lo estimare conveniente, podrá no conformarse con ninguno de los propuestos y exigir nuevas ternas.

Las acciones de esta sociedad serán nominativas y no podrán ser transferidas sin previo conocimiento del Gobierno.

19

Si el contratista estableciera su domicillo fuera de la corte, tendrá en ella persona competentemente autorizada que le represente en todo cuanto haya de tratar con el Gobierno respecto de este contrato. El apoderado deberá hallarse con

thereto by *force majeure*, which circumstance shall be proved in due form.

15

Delays occasioned by unfavorable conditions of the sea and general head winds will not be considered as cases of *force majeure* for the purposes of the foregoing article, or as justifiable; neither shall injuries to engines, boilers or apparel that vessels may suffer while under way, so long as they do not constitute an extraordinary accident; nor shall such injuries as may be charged to the contractor or his agents or employees, occasioned either by the malice, ignorance or negligence of the same, be so considered.

16

The contractor shall not assign or transfer this service without the previous authority of the Government.

17

Spaniards, who for themselves or through their legitimate representative may solicit it, or any of the several corporations recognized by law, provided they are domiciled in Spain, may become contractors for this service, after the proper adjudication upon the terms laid down by the Minister of the Colonies.

18

In case a joint stock corporation becomes the contractor, its managers or directors shall be selected by the Government from three nominated by the general meeting of stockholders.

The Government, should it deem it expedient, may object to all of the nominees, and require three more to be submitted. The shares of this corporation shall be registered in the name of the holders, and shall not be assigned without the previous knowledge of the Government.

19

Should the contractor establish his domicile outside of Madrid, he shall have there a person properly empowered to represent him in all matters concerning the contract upon which he may have to confer with the Government.

poderes bastantes, no sólo para representar al contratista, tanto judicial como extrajudiciamente, sino también para obligarle en cuantos asuntos ocurran relativos á la ejecución y cumplimineto del presente contrato.

20

Los vapores que el contratista tenga asignados á este servicio serán preferidos para su despacho en las visitas de Sanidad y puerto y en las oficinas del Estado, debiendo ser atendidos sus Capitanes en el momento en que se presenten, suspendiéndose cualquier otro asunto, si fuese necesario, hasta que quede despachado el correo.

21

Las cuestiones que pudieran suscitarse acerca de la inteligencia, cumplimiento, rescisión y efectos del presente contrato, se resolverán por el Ministerio de Ultramar, con arreglo á la legislación por que se rigen todos los del Estado, y al hacerse contenciosas, se ventilarán ante el tribunal competente en el modo y forma que determinen las Leyes.

De los buques

22

Para el servicio de las Antillas se obliga el contratista á tener á flote doce buques de vapor de las condiciones que más adelante se determinan, mientras cada uno de los barcos, ó todos juntos, no realicen una marcha media de 14 millas en prueba. En este caso, los barcos que el contratista estará obligado á conservar á flote serán diez solamente.

Para desempeñar el servicio de 11,50 millas con la oportunidad necesaria, el contratista deberá tener presentados tres vapores el primer mes, tres el segundo, tres el tercero y tres el cuarto mes del primer año del contrato, de un andar en prueba de 13 millas.

Para desempeñar el servicio de 12 millas, deberá tener presentados, con la oportunidad necesari, diez buques de un andar en prueba de 14 millas.

Y para con la misma oportunidad poder plantear el servicio de 12,50 millas, promedio anual, deberá tener presentados

The attorney in fact must be possessed of sufficient authority, not only to represent the contractor legally as well as extrajudicially, but also to bind him in all things growing out of the execution and performance of this contract.

20

The steamships the contractor may employ in this service shall have preference in the visits of the health officer and harbor master and in the Government offices, their Captains being entitled to immediate attention upon presenting themselves, all other matters being suspended, if necessary, until the mail shall be dispatched.

21

Questions that may arise regarding the meaning, performance, rescission and effects of this contract shall be determined by the Ministry of the Colonies, in accordance with the laws governing all Government contracts, and upon disagreements arising they shall be settled before the competent court in the manner and form provided by law.

Of the vessels.

22

For the West Indian service the contractor binds himself to keep afloat twelve steamships having the conditions hereinafter set forth, until each or all of the vessels reach an average trial speed of 14 miles. When this occurs, the vessels the contractor shall be bound to keep afloat shall be ten only.

To perform the 11.50 mile service within the necessary time, the contractor must have turned over three steamships the first month, three the second, three the third and three the fourth month of the first year of the contract, of a trial speed of 13 miles.

To perform the 12 mile service, he must have turned over within the necessary time ten vessels of a trial speed of 14 miles.

And to be able to establish the 12.50 mile (annual average) service within the necessary time, he must have turned over

ocho buques de 14 millas y dos de 17 millas en prueba, en la cual podrá emplear el tiro forzado.

Antes del año de 1896 deberá presentar un tercer buque de un ander de 17 millas en prueba, la cual podrá también hacerse con el tiro forzado.

23

Para el servicio de Filipinas se compromete el concesionario á tenor á flote seis buques de vapor de las condiciones siguientes, á saber:

Para desempeñar el servicio de 10,15 millas, el contratista se compromete á presentar con la debida oportunidad seis vapores desde Julio á Diciembre de 1887, uno cada mes, de un andar en prueba de 12 millas.

Para desempeñar el servicio de 11,15 millas, deberá tener presentados, con la oportunidad necesaria, seis buques, de un andar en prueba de 13 millas.

Para la fecha en que deba desempeñarle á 12,50, deberá tener presentados seis buques de 14 millas en prueba.

24

Además de los diez y ocho buques de altura, el contratista se compromete á tener á flote y mantener en buen estado de conservación el número de buques auxiliares suficientes para servir las extensiones que especifica el art. 2.°, de una cabida adecuada al tráfico que han de servir.

Igualmente se obliga á tener á flote el número de buques necesarios para desempeñar el servicio de Buenos Aires, según el art. 2.° (*C*); el de Fernando Póo, según el art. 2.° (*D*); los de Marruecos, según el articulo 2.° (*E*); el de Cádiz á Tánger y el de Cádiz á los otros puertos de Marruecos.

Todos ellos han de ser de cabida proporcionada al tráfico á que se destinan.

25

Los buques destinados á las lineas principales de correos de las Antillas y Filipinas, podrán emplearse indiferentemente en ambos servicios, sin perjuicio de la marcha media anual que en cada uno deben alcanzar. Los buques nuevos serán de hierro, acero ó del material que la

eight vessels of a trial speed of 14 miles and two of 17 miles, in which he may employ forced draught.

Before the year 1896 he must turn over a third vessel of a trial speed of 17 miles, which he may also secure by forced draught.

23

For the Philippine service the concessionary binds himself to have afloat six steamships having the following conditions, to wit:

To perform the 10.15 mile service the contractor binds himself to turn over within the proper time six steamships between July and December, 1887, on each month, of a trial speed of 12 miles.

To perform the 11.15 mile service, he must have turned over, within the necessary time, six vessels of a trial speed of 13 miles.

By the date upon which he must perform the 12.50 mile service he must have turned over six vessels of a trial speed of 14 miles.

24

Besides the eighteen ocean-going vessels, the contractor binds himself to keep afloat and maintain in a good state of repair the number of auxiliary vessels sufficient to serve the extensions specified in Art. 2, of a capacity adapted to the traffic in which they are to engage.

He likewise binds himself to have afloat the number of vessels necessary to perform the Buenos Aires service, pursuant to Art. 2, *C;* the Fernando Po service, pursuant to Art. 2, *D;* the Morocco services, pursuant to Art. 2, *E;* the service from Cadiz to Tangiers and that from Cadiz to the other ports of Morocco. All these must be of a capacity proportionate to the traffic in which they are engaged.

25

The vessels intended for the principal West Indian and Philippine mail lines may be employed indiscriminately in both services, without prejudice to the mean annual speed each must attain. The new vessels shall be of iron or of the material experience may prove to be the

experiencia acredite como más beneficioso; estarán construídos conforme á las reglas del *Lloyd* ó del *Veritas*, clasificados por una de estas compañías con la mejor letra ó nota; tendrán casco de doble fondo, dividido en secciones estancos, sistema celular, con cuantas mejoras hayan acreditado los progresos del arte de la construcción naval, y su cubierta y costados tendrán la solidez necesaria para sopotar la artillería que deben llevar. Medirán cuando menos 5.000 toneladas de desplazamiento en la línea de las Antillas, y 4.500 en las de Filipinas. Serán de hélice, y las máquinas de vapor sistema Compound, de triple expansión ó de otro que estuviese más acreditado, y capaces de imprimir la velocidad que á cada barco se le exija, debiendo estar preparados para emplear el tiro forzado cuando conviniere.

Las carboneras serán de hierro y capaces de contener el carbón necesario para el consumo del trayecto más largo entre los puertos que los buques hayan de recorrer, y además el 10 por 100 de dicho consumo.

Los destiladores de agua dulce deberán producir á lo menos 300 litros de agua por hora.

Los alojamientos serán todo lo amplios, ventilados y espaciosos que permitan las dimensiones de los buques, y las instalaciones estarán á la altura de las mejores del extranjero.

En los camarotes no se permitirá más número de literas que el que cómodamente pueda establecerse, tomando por norma para cada camarote de dos personas en circunstancias ordinaris la longitud de dos metros (de popa á proa) y dos y medio de anchura.

Habrá en los barcos de las dos primeras líneas, capacidad para 500 plazas de tropa en el sollado y un lugar conveniente sobre cubierta.

Los buques estarán provistos en sus costados de portas sólidas y de buena luz y ventilación. Habrá en primera cámara un baño para señoras y dos para caballeros, cuando menos, y uno en càmara de segunda.

Los buques estarán provistos del mayor número de botes salvavidas que puedan llevar, comprometiédose á mantenerse en este punto á la altura de las mejores líneas extranjeras.

best; they shall be constructed according to the Lloyd or Veritas rules, and classified by one of these companies under the best letter or mark; they shall have double-bottomed hulls, divided into watertight compartments, cellular system, with all the latest improvements known to the art of naval construction; and their deck and sides shall have the necessary strength to support the artillery they are to mount. They shall measure at least 5,000 tons of displacement on the West Indies line, and 4,500 on the Philippine lines. They shall be screw vessels, with compound engines, triple expansion, or any other system of more repute, and capable of maintaining the speed required of each vessel, and being prepared to employ forced draught when expedient.

The bunkers shall be of iron and capable of holding the coal necessary for use on the longest route between the ports at which the vessels are to call, plus 10 per cent. of such supply.

The fresh water condensers shall produce at least 300 liters of water per hour.

The accommodations shall be as ample, ventilated and spacious as the dimensions of the vessels will allow, and the fixtures shall be on a par with the best abroad.

The staterooms shall contain no greater number of berths than they can comfortably hold, taking as a standard for each stateroom, for two persons of ordinary dimensions, a length of two meters, from stern to stem, and a width of two-and-a-half.

The vessels of the two first lines shall have a capacity for 500 enlisted men in the orlop deck and a convenient place on deck.

The vessels shall be provided with solid ports and good light and ventilation on the sides. The first cabin shall have one bath for ladies and two for men, at least, and one bath in the second cabin.

The vessels shall be provided with the greatest number of life boats they can carry, being bound to keep in this respect on a par with the best foreign lines.

Llevarán cinturones salvavidas para todos los pasajeros y tripulantes y aparatos contra incendio. Una instrucción, colocada en sitio visible, determinara lo que cada pasajero y tripulante deberá practicar en caso de siniestro para el salvamento común.

Tendrán el suficiente número de mamparos estancos, según los últimos adelantos de los mejores correos extranjeros, y las portas de dichos mamparos han de estar en disposición de poder cerrarse rápidamente en caso necesario.

Estarán tambieén provistos de un juego completo de bombas y comunicaciones para achicar cada compartimiento.

Al empezarse la construcción de un buque, la compañia presentará al Ministro de Ultramar los planos del mismo, tal como á ella le convenga para su servicio comercial y postal. El Ministro hará estudiar las disposiciones que deban tomarse en previsión de la instalación rápida en tiempo de guerra de piezas de artillería á bordo de dicho buque, y podrá obligarse á la Compañia á hacer los refuerzos parciales en el casco que juzgue útiles para el establecimiento posible de esa artillería.

Dichos refuerzos no podrán ser exigidos para mayor número de seis piezas cuyo peso y esfuerzo de reacción no excedan de los de una pieza de 14 centimetros.

Respecto á los buques ya construídos, bastará que la Compañia ponga de manifiesto los planos de los mismos, á fin de que el Ministro de Marina pueda hacer estudiar las medidas necesarias para adaptar dichos buques al servicio de guerra.

Si el Ministro juzgara necesario ó posible establecer desde el principio de la concesión variaciones en el sentido de esos usos, se llevarán á cabo, cuidando de que por ellas no sufra interrupción el servicio, y entendiéndose, que tanto en este caso como en el de nuevas adquisiciones, las reformas propuestas por el Ministerio serán de aquellas que no perjudiquen á los fines comerciales de los buques.

26

Cada buque embarcará, para su defensa, el armamento siguiente: 2 cañones sistema

They shall carry life belts for all the passengers and crew and fire-extinguishing apparatus. Instructions, displayed in some visible place, shall state what each passenger and number of the crew shall do in case of disaster for the common rescue.

They shall have a sufficient number of compartment bulkheads, according to the latest improvements on the best foreign mail steamers, and the ports of said bulkheads must be in a condition to be rapidly closed whenever necessary.

They shall also be provided with a complete set of pumps and connections to free each compartment of water.

When the construction of a vessel is begun the Company will present to the Minister of Marine the plans of the same, just as it wants her for its commercial and postal service. The Minister shall cause to be studied the steps that should be taken looking to the rapid mounting in time of war of pieces of artillery on board of said vessel, and the Company may be compelled to do such strengthening of the hull as may be deemed necessary for the possible mounting of artillery.

Such strengthening shall not be required for more than six pieces, whose weight and recoil force shall not exceed those of a 14-centimeter piece.

With respect to the vessels already constructed, the Company need only produce the plans thereof in order that the Minister of Marine may cause to be studied the measures necessary to adapt the said vessels to war service.

Should the Minister deem it necessary or possible to make changes in the way indicated from the beginning of the concession, they will be carried out, taking care that the service suffers no interruption thereby, and provided that in this instance, as well as in that of new acquisitions, the changes proposed by the Ministry shall be such as shall not prejudice the trade purposes of the vessels.

26

Each vessel shall take on board for its defense the following armament: Two

Hontoria, de 9 centésimas, con pólvora y municiones para 30 tiros cada pieza, 20 fusiles ó carabinas de sistema Rémington con 100 tiros para cada uno y bayoneta ó sable-bayoneta, y 20 sables de Marina (1).

27

Los buques empleados por el contratista deberán estar abanderados y matriculados en España y pertenecer á españoles, con arreglo á las disposiciones del Código de Comercio, de las Ordenanzas de Marina y demás prescripciones vigentes (2).

28

Si alguno de los vapores se inutilizase ó debiere ser retirado antes de 1895, será reemplazado con otro de tonelaje y marcha acomodadas á las exigencias del servicio que hasta entonces deba prestar la Compañía, con la mejora posible. Si la necesidad de retirar y reemplazar el buque surgiere después de 1895, el que haya de sustituirlo deberá tener una marcha en prueba de una milla más que el inutilizado ó perdido, salvo que se trate de reemplazar alguno de los que hubiesen acreditado la marcha de 17 millas. En este caso, si la necesidad del reemplazo ocurriere antes de 1899, la obligación del concesionario quedará limitada á sustituír el barco por otro de igunales condiciones de capacidad, comodidad y marcha. Si el siniestro ocurriese después de 1899, deberá exceder al anterior en media milla de velocidad, é

(1) Por R. O. de 1.º de Junio de 1889, y como consecuencia de instancia presentada por el representante de la Compañía Trasatlántica, se le concedió autorización para adquirir 20 cañones de 12 centímetros, modelo 83, para sus vapores correos, en sustitución de los de igual número de 9 centímetros de los mandados construír, estimándose ventajosa esta modificación, que sin alterar las condiciones del contrato, aumenta la defensa de los buques con un armamento más potente y eficaz que el prevenido en el art. 26 del mismo, con la condición de que se llenen, en los buques donde hayan de montarse dichos cañones, las condiciones de seguridad y firmeza que se exigen en los párrafos 12 y 13 del art. 25 del contrato, con lo cual quedarán en circunstancias más á propósito para el caso de tenerlos que armar en guerra.

(2) Véase Abanderamiento en el Título primero, capítulo I.

9-centimeter Hontoria guns, with powder and ammunition for 30 rounds for each piece; 20 Remington rifles or carbines, with 100 rounds apiece and a bayonet or sword-bayonet for each, and 20 cutlasses (1).

27

Vessels employed by the contractor must be enrolled and registered in Spain, and belong to Spaniards, pursuant to the provisions of the Code of Commerce, Marine Ordinances, and other regulations in force (2).

28

Should any one of the vessels become disabled or need to be withdrawn before 1895, it shall be replaced by another of a tonnage and speed adapted to the requirements of the service the Company must render up to that time, with all possible improvements. If the necessity for withdrawing and replacing the vessel arises after 1895, the vessel substituting it must have a trial speed one mile greater than that of the disabled or lost vessel, except when it is intended to replace one that has shown a speed of 17 miles. In this event, if the necessity for replacing occurs before 1899, the obligation of the concessionary is limited to substituting for the vessel another of equal conditions in the way of capacity, commodiousness and speed. Should the disaster occur after 1899, the vessel must exceed the former in speed by

(1) By Royal Order of June 1, 1889, and at the instance of the representative of the *Compañía Trasatlántica*, it was granted authority to acquire 20 12-centimeter guns, model 83, for its mail ships, in substitution of an equal number of 9-centimeter guns ordered made, this change being deemed advantageous, which, without altering the conditions of the contract, increases the defense of the vessels with a more powerful and efficient armament than that provided by Art. 26 of the same, upon condition that the vessels where said guns are to be mounted shall meet the requirements of solidity and strength called for in paragraphs 12 and 13 of Art. 25 of the contract, with which they will be in better conditions in case they have to be armed for war.

(2.) See *Abanderamiento*, Title first, Chap. I.

igualarle, á lo menos, en las restantes condiciones.

La reposición ó sustitución de los barcos retirados ó destruidos, deberá hacerla el concesionario dentro del plazo de diez y seis meses, á contar desde el día en que se le diese la orden al efecto.

En este caso, y en el de que los buques se inultilicen inopinadamente para el turno en el servicio, el contratista deberá continur éste provisionalmente sin interrupción, con buques que, previo el reconocimiento facultativo de que trata el artículo siguiente, sean aptos para desempeñarlo.

29

Los buques pertenecientes á las líneas principales de correos á que se refiere este contrato no se emplearán sino después de haber sido recocidos y admitidos. Se exceptúa el caso de que lo hubiesen sido al empezar los servicios actuales, siempre que de ese reconocimiento resultasen con las condiciones de marcha que para los nuevos servicios se exigen (1).

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(1) Por R. O. de Ultramar de 15 de Febrero de 1890, se declara sin lugar la denuncia hecha por el Inspector facultativo de la Compañía Transatlántica referente á que algunos barcos de la misma tienen más de veinte años, en atención á que el *San Francisco de Loyola* y el *Satrustegui*, á cuyos buques se refiere la dicha denuncia, son procedentes de los servicios antiguos, no siéndoles por tanto aplicable la prescripción 6.ª de la R O. de 28 de Julio de 1887 y sí la excepción consignada en el artículo 29 de este contrato-ley.

Prescripción 6.ª citada de la R. O. de 28 de Junio de 1887.

Sancionada la Ley concediendo los créditos necesarios para llevar á cabo el contrato de servicios postales marítimos, y á fin de que antes de proceder al otorgamiento de la escritura entre el Gobierno y la Compañia Transatlántica constare en todo tiempo cómo se entendía el contrato, sometió el Gobierno á la aceptación de la referida Compañia, por R. O. de 28 de Junio de 1887, para que expresamente quedase declarado que así lo entendía ella también, diversas declaraciones, entre las cuales expreseba la sexta lo siguiente: "En cuanto á la recepción de los buques con que ha de prestarse el servicio, no podrán admitirse barcos que tengan una edad superior á aquella que según el contrato necesitan para quedar totalmente amortizados, con la reserva de un 5 por 100 anual, es decir, *que barcos de más de veinte años no podrán ser en ningún caso recibid os...*"

a half mile, and equal it at least in the other requirements. The restoration or substitution of vessels withdrawn or destroyed must be effected by the concessionary within the term of sixteen months reckoned from the day on which he receives the order in the premises.

In such case, and in the event of the vessels becoming unexpectedly prevented from taking their turn in the service, the contractor must continue this temporarily without interruption with vessels which, after the expert inspection of which the next article treats, shall be fit to perform it.

29

The vessels belonging to the principal mail lines to which this contract refers shall not be employed until after they are inspected and accepted, save in case they were inspected upon entering the present service; provided that such inspection showed them to have the speed requirements called for in the new services (1).

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(1) By R. O through the Ministry of the Colonies of February 15, 1890, the complaint of the expert Inspector of the *Compañia Trasatlántica* to the effect that some of the vessels of the same are over twenty years of age, was declared to be groundless, in view of the fact that the *San Francisco de Loyola* and the *Satrustegui*, to which vessels the said complaint referred, came from the old services, the 6th provision of the R O. of July 28, 1887, being therefore inapplicable to them, while the exception set forth in Article 29 of this contract law is applicable.

Sixth provision of the R. O. of June 28, 1887, above cited:

The law appropriating the money necessary to carry out the contract of maritime postal services having been approved, and in order that before proceeding to the execution of the instrument between the Government and the *Compañia Trasatlántica*, it should appear at all times how the contract was understood, the Government submitted for the acceptance of the said Company, by R. O. of June 28, 1887, so that it might be expressly declared that the latter also understood it in the same way, several declarations, among which the sixth read as follows:

"As regards the acceptance of vessels with which the service is to be rendered, no vessel can be accepted of an age greater than that which, according to the contract they need to reach to be wholly paid for with the annual 5

El reconocimiento, que deberá verificarse á flote y en seco, siempre que sea posible, se desempeñará por una comisión facultativa, nombrada por el Ministerio de Marina, que examinará las condiciones de los buques, en la forma que se expresa á continuación, asegurándose previamente de que el certificado y clasificación por el Lloyd ó el Veritas de que trata el art. 25 se refieren precisamente al buque que se reconoce.

El contratista presentará además para el reconocimiento los documentos que acrediten la época en que los buques se construyeron y empezaron á prestar su servicio, y los referentes á las máquinas y calderas, expresando la prosión á que éstas fueron probadas, y acompañando los comprobantes necesarios para que no puedo caber duda nunca acerca de estos extremos.

30

La comisión á que se refiere el articulo anterior se cerciorará y así lo hará constar:

1.° Del arqueo que los buques midan, y de si se hallan en perfecto estado de servicio y de conversación y resistencia de sus diferentes partes.

2.° De si la arboladura, jarcia y velamen están en relación con el casco, atendido el servicio á que el buque se destine, y si tiene la resistencia suficiente y se halla en buen estado, asi como los aparatos para su labor.

3.° De si las máquinas y calderas están sólidamente construidas y en perfecto estado de servicio, examinando los documentos que acrediten la época en que fueron probadas y á qué presión.

4.° De si las carboneras tienen la capacidad debida, determinando y expresando cuál sea ésta.

5.° De si los repartimientos están bien

La Compañia, por comunicación de 30 del mismo mes y año, contestó acerca de esta declaración manisfestándose conforme con la misma, añadiendo que no veía en ello inconveniente, supuesto que 'no entra en los propósitos de la Compañía presentar en sustitución de los actuales vapores, al llegar la ocación de reponerlos, otros que no puedan ser recibidos por tener más de veinte años.' (R. O. de 24 de Febrero de 1890.)

The inspection, which should be carried out afloat and in dry dock whenever possible, will be made by an expert commission appointed by the Ministry of Marine, which shall examine the condition of the vessels, in the manner mentioned below, first assuring itself that the Lloyd or Veritas certificate and classification, of which Art. 25 treats, absolutely relate to the vessel under inspection.

The contractor shall further present for inspection the documents proving the time when the vessels were built and commenced to render service, and such as relate to the engines and boilers, showing the pressure at which the latter were tested, and accompanying the necessary vouchers so that there can never be any doubt regarding these matters.

30

The Commission to which the foregoing article refers shall ascertain and record:

1. As to the capacity the vessels measure, and whether they are in a perfectly serviceable state of preservation, and the resistance of their different parts.

2. As to whether the spars, rigging and sails harmonize with the hull, in view of the service to which the vessel may be put, and whether it has sufficient resistance and it, as well as the apparatus for working it, is in sound condition.

3. As to whether the engines and boilers are solidly constructed and in a perfectly serviceable condition, examining the documents which show the time when they were tested and at what pressure.

4. As to whether the bunkers have the proper capacity, determining and stating what it is.

5. As to whether the compartments

per cent. reserve fund, that is to say, *that vessels over twenty years old can in no case be received.*" The Company, through a communication of the same month and year, replied regarding this declaration, manifesting its conformity therewith, and adding that it saw no objection thereto since "it is not among the purposes of the Company to present in substitution of the present steamships, should occasion offer, others that cannot be accepted because they are over twenty years old." (R. O. of February 24, 1890.)

dispuestos y los alojamientos tienen la ventilación, comodidad y capacidad prevenidas en los artículos anteriores y prescripciones vigentes, determinando y expresado el número de todas clases de que son capaces (1).

6.° Y, por último, de si los buques tienen las piezas de respeto de máquinas, según su clase, y de arboladura, velamen y jarcia que deben llevar, y el completo de embarcaciones menores, de los cuales dos deberán ser salvavidas (2), anclas, cadenas, remos, bombas, destiladores de agua dulce y algibes de hierro, expresando su cabida; aparatos contra incendios, medios de salvamento, etc., etc., vajillas, efectos de cámara y demás pertrechos necesarios en buques de tal porte y servicio, instrumentos y cartas de navegación.

31

Concluído el reconocimiento, formará la comisión ó Junta facultativa un estado en que se presente el de las respectivas partes reconocidas y aprobadas, el cual será entregado al Capitán general del Departamento, quien tendrá la facultad de hacerlo ampliar en cualquiera de los puntos que juzgue conveniente, remitiéndolo al Gobierno con las observaciones que crea oportunas.

32

Reconocidos los buques en la forma expresada, se pondrán á su bordo, por lo menos, la mitad del carbón y de la carga de que sean capaces, ó un peso equivalente, y la comisión procederá á las pruebas de navegación. La primera de éstas tendrá lugar con buen tiempo y mar llana, si fuera posible, y en ella han de alcanzar los buques, navegande solamente á máquina, las velocidades indicades en los artículos respectivos, en un período de cuatro ó seis horas, estimándose este andar por marcaciones previamente determinadas, y con una presión de calderas menor que la mitad de la que sufriera en las pruebas de resistencia.

(1) Véase el capítulo II de este mismo Título.

(2) Los Reglamentos del material de salvamento y de respecto que deben llevar los buques mercantes, van insertos al final del capítulo IX, Título tercero.

are well arranged and the accommodations have the ventilation, comforts and capacity, prescribed in the foregoing articles and the regulations in force, determining and stating the number of passengers of all classes they can carry (1).

6. And, lastly, as to whether the vessels have the spare pieces of machinery, according to class, and the spare spars, rigging and sails they should carry, and the complement of small boats, two of which should be life-boats (2), anchors, chains, oars, pumps, fresh water condensers and iron tanks, stating their capacity; fire-extinguishing apparatus, life-saving appliances, etc., etc., table service, stateroom supplies and other stores necessary for vessels of that burden and service, navigating instruments and charts.

31

The inspection finished, the expert commission or board will draw up a statement showing the condition of the respective parts inspected and approved, which shall be delivered to the Captain-General of the Department, who shall have authority to have it amplified upon any points he may deem advisable, transmitting it to the Government with the observations he may consider opportune.

32

The vessels having been inspected in the manner aforesaid, there shall be taken on board at least one-half the coal and cargo they can carry, or an equivalent weight, and the commission will proceed to the speed trials. The first of these shall take place in good weather and smooth sea, if possible, and the vessels must show, under engine power alone, the speeds mentioned in the respective articles, for the space of four to six hours, this speed being arrived at by means of previously designated marks, and under a boiler pressure less than one-half that which would be used in the resistance trials.

(1) See Chapter II of this same Title.

(2) The Regulations as to life-saving appliances and spare stores that merchant vessels should carry are inserted at the end of Chapter IX, Title Third.

En la segunda prueba, con mar y viento, la comisión examinará las condiciones del buque, velocidad, balance, influencia del aparejo, andar del buque ayudado de éste y con sólo el auxilio de la máquina, y el consumo de carbón en uno y otro caso, expresando su clase.

Se probará también la velocidad á diferentes grados de expansión, expresando todas las circunstancias que se crean necesarias para formar una idea exacta del trabajo útil de las máquinas y del servicio que podrá prestar el buque en las navegaciones á que se destina.

33

La comisión formará un estado de ambas pruebas, en el que se detallarán las máquinas en funciones, velocidad obtenida en diferentes circunstancias y condiciones, consumo de combustible, balance, a cuantos datos puedan contribuir á formar conocimiento del buque, anotando al propio tiempo las observaciones que estime convenientes en consideración al servicio que estos vapores han de prestar, asi como las variaciones ó mejoras que convenga introducir, y si el buque debe ó no ser admitido para el servicio.

Este documento será remitido al Gobierno por conducto del Capitán general del Departamento.

34

El Ministerio de Ultramar, en vista de los resultados de los reconocimientos y pruebas de las observaciones de la Junta facultativa y del Capitán general al remitir los estados de que va hecha mención, asi como de lo que deberá informal el Ministerio de Marina, decidirá lo que estime conveniente acerca de la admisión del buque ó buques para el servicio de que se trata.

35

Los buques, sus máquinas, armamentos y demás efectos pertenecientes á los mismos, deberán conservarse constantemente en buen estado de servicio.

36

Para la debida vigilancia y seguridad del complimiento del articulo anterior, nombrará el Capitán general del Departa-

In the second trial, with sea and wind, the commission will examine the qualities of the vessel, velocity, roll, influence of the sails, the speed of the vessel aided thereby and with the assistance of the engines alone, and the coal consumption in each case, stating its kind.

The speed will also be tested at different degrees of expansion, stating all the circumstances that may be thought necessary to form an exact idea of the available power of the engines and of the service the vessel can render on the routes she is to follow.

33

The Commission will draw up a report of both trials, which shall give in detail the condition of the engines in motion, speed obtained under different circumstances and conditions, fuel consumption, roll, and whatever data it can contribute to a knowledge of the vessel, noting at the same time such observations as it may deem advisable as to the service these steamships are to perform, as well as the alterations or improvements it may be expedient to introduce, and whether or not the vessel should be accepted for the service.

This document shall be transmitted to the Government through the Captain-General of the Department.

34

The Ministry of the Colonies, in view of the results of the inspections and tests, of the observations of the expert board and of the Captain-General upon forwarding the reports of which mention has been made, as well as of what the Ministry of Marine may report, shall decide whatever he may consider advisable with regard to the acceptance of the vessel or vessels for the service mentioned.

35

The vessels, their engines, armaments, and other appurtenances of the same, shall be constantly maintained in a good serviceable condition.

36

To insure due vigilance and the enforcement of the foregoing article, the Captain General of the Department of

mento de Cádiz una Junta compuesta de tres personas competentes de los Cuerpos de la Armada, que inspeccione los buques, siempre que lo juzgue oportuno dicha Autoridad, y precisamente en cada cuatro viajes redondos (1).

Del estado en que los encuentre dará la Junta cuenta á aquella Autoridad, para que haga remediar las faltas que tenga ó los abusos que advierta; y si el contratista se negare á cumplir lo que se le ordena, se prohibirá la salida de los buques, quedando aquél responsable de las consecuencias.

El Gobierno podrá disponer, cuando lo estime conveniente, que un Jefe de la Armada pase á inspeccionar el servicio general de las líneas y el particular de los buques; y para estos casos el contratista se obliga á facilitarle pasaje en primera clase y camarote independiente, así como un bote tripulado, del que podrá disponer siempre que lo necesite (2).

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(1) Por R. O. de Ultramar, de 19 de Febrero de 1888, trasladada por Marina en 24 del mismo mes y año, se despone que la inspección de los vapores de la Compañía Transatlántica destinados á los servicios de las líneas de Buenos Aires, Marruecos y Fernando Póo, se verifique en la primera oportunidad que se presente, sin esperar á que sea precisamente cada cuatro viajes redondos, como se expresa en el contrato. Y por otra Real disposición de 5 de Marzo de 1890, se hacen extensivas al Comandante general del Apostadero de la Habana las facultades que el art. 36 del mismo confiere al Capitán general del Departamento de Cádiz, con relación á los reconocimientos de los vapores que prestan servicio en las Antillas, Seno Mejicano y Estados Unidos.

NOTA.—La primera de las citadas disposiciones se halla inserta en el Apéndice á la *Legislación Marítima* del citado año.

(2) La inspeción facultativa á que se refiere este artículo se halla reglamentada por R. O. de 23 de Julio de 1888, y el Inspector y los auxiliares tienen consignadas entre sus obligaciones la de recorrer en toda su extensión, y por lo menos una vez en el espacio de tiempo señalado á sus destinos, las líneas principales que sirve la Compañía.—Navegar con la frecuencia necesaria para vigilar el servicio en la mar bajo los múltiples aspectos que abraza el contrato, y preferentemente, lo que afecta al pasaje militar y á los medios de salvamento.—Dar cuenta al Ministro de Marina de las de-

Cadiz will appoint a board composed of three competent persons from the officers of the Navy to inspect the vessels whenever said authority may see fit, and certainly every four round trips (1).

The board will report the condition in which it finds them to that authority, in order that he may cause the defects therein or the abuses he may notice to be remedied; and should the contractor decline to carry out what he is ordered to do, the departure of the vessels shall be prohibited, the former being held responsible for the consequences.

The Government may order, when it may consider it expedient, that an officer of the Navy proceed to inspect the general service of the lines and the special service of the vessels; and in such cases the contractor binds himself to furnish him first-class passage and a separate stateroom, as well as a manned boat, which shall be at his disposal whenever he needs it (2).

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(1) By R. O. through the Ministry of the Colonies, of February 19, 1888, forwarded by the Ministry of Marine on the 24th of the said month and year, it is provided that the inspection of steamships of the *Compañia Trasatlántica* destined to the service of the Buenos Aires, Morocco and Fernando Po lines shall take place at the first opportunity presenting itself, without waiting for every fourth round trip, as expressed in the contract. And by another Royal Order of March 5, 1890, the authority that Art. 36 of the same confers on the Captain-General of the Department of Cadiz is extended to the Commandant General of the Naval Station of Havana, with respect to the inspection of the steamships performing the service in the West Indies, Gulf of Mexico and the United States.

NOTE.—The first of the orders cited is to be found inserted in the Appendix to the *Legislación Marítima* of the said year.

(2) The expert inspection to which this article refers is governed by R. O. of July 23, 1886, and the inspector and his assistants have designated among their obligations the duty to go over the entire length of the principal lines served by the Company, at least once during the time of their detail. To take ship with the frequency necessary to watch the service at sea under the many features the contract embraces, and preferably, whatever affects military transportation and life-saving means. To report to the Minister of Marine the deficiencies, if any, in said service, suggesting the

37

Si se encontrase que por cualquier accidente el casco, máquinas ó calderas habian sufrido una avería que no permitiere al buque navegar con seguridad, tendrá facultad el Capitán general del Departamento para detener el vapor, dando cuenta al Gobierno, y no se permitirá que haga el viaje sin que antes se remedie completamente la avería, á satisfacción de la Junta, que lo reconocerá al efecto.

Iguales facultades ejercerán en todo los Comandantes generales de los Apostaderos de la Habana y Filipinas, si las averías tuvieren que remediarse en aquellos puertos.

38

Los Capitanes de los buques la obligación de presentar los cuadernos de bitácora y de vapor siempre que se les pidan por las Autoridades de Marina en los puertos extremos de la línea, á fin de que el Gobierno pueda informarse, cuado lo crea conveniente, de la regularidad, exactitud y diligencia con que se verifica el servicio, y exigir la responsabilidad á que hubiese lugar. Los referidos cuadernos deberán llevarse del mismo modo que en los buques de guerra (1).

37

Should it be found that through any accident the hull, engines or boilers had suffered an injury, preventing the vessel from proceeding with safety, the Captain-General of the Department has authority to detain the steamship, reporting the fact to the Government, and it will not be permitted to make the voyage without first having completely repaired the damage to the satisfaction of the board, which shall inspect it for the purpose.

A like authority shall be exercised by the Commandants General of the Naval Stations of Havana and the Philippines, should the damages have to be repaired in those ports.

38

The Captains of the vessels are bound to present their logbooks and steam logs whenever requested by the Marine authorities in the terminal ports of the line, so that the Government may inform itself, when it deems it advisable, of the regularity, accuracy and diligence with which the service is conducted, and place responsibility where it belongs. The said books must be kept the same as those on board warships (1).

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ficiencias, si las hubiere, en dichos servicios, indicando los medios propios para corregirlas, y haciendo llegar á noticia del de Ultramar, por el conducto debido, todas las infracciones del contrato ajenas á la inspección facultativa que les está encomendada.—Investigar si el trato del pasaje se ha ajustodo á lo que previenen el Reglamento interior de los buques-correos y la R. O de 12 de Enero de 1867, para el pasaje militar.—Y dar cuenta á quien corresponda, según el contrato, de las quejas que aparezcan en el libro que al efecto existe en cada buque.

NOTA.—Por R. O. de 23 de Abril de 1891, ha sido disuelta la mencionada inspeción facultativa, nombrándose en su lugar la Junta de que trata el art. 36 de este contrato.

(1) Por R. O de 8 de Agosto de 1888, se dispone se circule á los Capitanes de los vapores de la línea de Filipinas la conveniencia de hacer constar en el diario de navegación de cada viaje, y como resumen final, el tiempo exacto de navegación empleado, y si el viaje se verificó á favor ó en contra monzón, justificando además haber realizado la travesía con los fondos sucios en los casos en que esto tenga lugar.

NOTA.—La R. O. citada se halla inserta en el Apéndice á la *Legislación Marítima* del indicado año.

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proper means to correct them, and bringing to the notice of the Minister of the Colonies, through the proper channels, all violations of the contract outside the expert inspection confided to them. To investigate whether the treatment of passengers conforms to the provisions of the internal regulations of mail steamers and the R. O. of January 12, 1867, on military passengers. And to report to the proper person, pursuant to the contract, the complaints appearing in the book kept for such purpose on each vessel.

NOTE.—By R. O. of April 23, 1891, the said expert inspection has been done away with, the board of which Art. 36 of this contract treats being named in its place.

(1) By R. O. of August 8, 1888, it is provided that the captains of the steamships on the Philippine line be advised of the expediency of setting down in the log of every voyage, and as a final resumé, the exact sailing time employed, and whether the voyage was before or against a monsoon; setting forth moreover that the trip was made with foul bottoms, in case where this is a fact.

NOTE.—The R. O. cited is to be found inserted in the Appendix to the *Legislación Marítima* for the year mentioned.

39

Siempre que no resultare perjucio para los trabajos urgentes de los buqnes de guerra, los vapores del contratista, previo permiso de la Autoridad de Marina, serán admitidos, para sus reparaciones, en los Arsenales, diques ó varaderos del Estado, mediante el pago de los gastos que ocasionaren.

40

Los vapores se hallarán sujetos á las disposiciones que rijan sobre sanidad y policía marítimas, como cualesquiera otros buques nacionales, en todo aquello que no se encuentre expresamente determinado en este pliego de condiciones.

De la tripulación

41

La tripulación de los buques corresponderá á la cabida y condiciones de los mismos y al mejor servicio.

Los Oficiales y tripulantes de los barcos correos serán españoles, y lo serán también, hasta donde sea posible, los maquinistas.

La Junta á que hace referencia el art. 36 ejercerá su inspección sobre este punto, dando cuenta por el conducto debido de las faltas que en él observe al Ministerio de Ultramar.

42

El contratista se compromete á admitir gratuitamente en cada buque, si el Gobierno lo exigiere, dos aprendices de maquinista.

De la conducción de la correspondencia y de las personas encargadas de su custodia.

43

La conducción de la correspondencia pública y privada, entre los puntos extremos ó intermedios de los viajes, se hará en los vapores bajo la responsabilidad directa del contratista, sin más abono que el de la subvención general de la línea.

44

Para los fines de este contrato, se entenderá como correspondencia pública y oficial todo saco, caja ó paquete de cartas, periódicos, libros impresos y los demás objetos que son transmisibles, con arreglo

39

Whenever urgent work on warships is not interfered with, the steamships of the contractor, by obtaining permission of naval authority, will be admitted for repairs to the navy yards, dry docks or graving slips of the Government, subject to the payment of the expenses incurred.

40

The steamships are subject to the same maritime, health and police regulations in force as other national vessels, in everything not expressly set forth in this instrument of conditions.

Of the crew.

41

The crews of the vessels shall be in keeping with the capacity and conditions of the same and their best handling. Officers and men of the mail ships shall be Spaniards, as shall also be, as far as possible, the engineers.

The board to which Art. 36 refers shall make their inspection cover this point, reporting, through proper channels, the violations thereof to the Ministry of the Colonies.

42

The contractor binds himself to take gratuitously on each vessel, should the Government require it, two machinists' apprentices.

Of the carrying of mails and of the persons entrusted with their custody.

43

The transportation of public and private mail matter, between the terminal or way ports of the trips, shall be done on the steamships under the direct responsibility of the contractor, without any bonus other than the general subvention of the line.

44

For the purpose of this contract every bag, box or package of letters, newspapers, printed books and other articles which are forwardable pursuant to the Postal Laws, without reference to the place of

á la legislación de Correos, sin atender al punto de destino ni de origen, así como los sacos y cajas vacías y otros efectos que se destinen ó hayan destinado á transportar la correspondencia ó se envíen á la Administración de Correos. Además de la correspondencia, la Empresa se obliga á transportar, sin más abono que el de la subvención de la línea, caudales, valores ó pastas para la acuñación de moneda y especies metálicas pertenecientes al Estado.

45

Los Capitanes de los buques recogerán por sí mismos la correspondencia de las Administraciones respectivas de Correos, la custodiarán en la forma que la reciban y la entregarán en la Administración á que vaya destinada.

De la correspondencia certificada se harán cargo nominalmente, firmando su recibo en la Administración que remite y entregándola en el punto de su destino con igual formalidad.

46

El Gobierno, si lo juzga conveniente, podrá en todo tiempo confiar el despacho de la correspondencia que se cursase por estas líneas á los funcionarios del ramo de Correos, sin perjuicio de los debres que, conforme á este pliego, corresponden á la Empresa. Para tal caso queda obligado el contratista á señalar á dichos funcionarios su pasaje gratuito en camarote de primera clase, y además un local seguro, cerrado con llave, para el desempeño de su cometido, y otro, también cerrado, para la custodia de la correspondencia. Tendrán asimismo á su disposición dichos funcionarios un bote convenientemente tripulado para las necesidades del servicio.

Las demás exigencias de éste se determinarán por un Reglamento especial, hecho de acuerdo con la Empresa.

47

En el caso de que por accidente sufrido en alguno de los buques de la Empresa, el viaje empezado no pudiera concluirse, los Capitanes y Agentes de aquélla cuidarán de asegurar el transporte de la correspondencia á los puertos de su destino por

destination or of origin, is understood to be private or official correspondence, as are also the empty pouches and boxes and other receptacles that are employed or may be employed in transporting the correspondence or are sent to the Post Office. The Company binds itself to transport, besides the correspondence, and without any bonus other than the subsidy of the line, money, values and bullion for the coinage of money and metallic specie belonging to the State.

45

The Captains of the vessels shall themselves collect the correpondence from the several post offices, shall keep it in custody in the form which it is received, and shall deliver it to the office to which it is addressed.

They shall take charge of the registered mail, signing for its receipt at the forwarding office, and delivering it at its destination with like formality.

46

The Government, should it deem it advisable, may at all times entrust the forwarding of the correspondence carried by these lines to the postal employees without prejudice to the duties which, pursuant to this instrument, attach to the Company. In such case the contractor is bound to furnish the said employees a free passage in a first-class stateroom, and, moreover, a safe place, under lock, for the discharge of his trust; and another, also under lock, for the custody of the correspondence. The said employees shall also have at their disposal a properly manned boat for the needs of the service.

The other requirements of the service shall be determined by special regulations, made by agreement with the Company.

47

When, through any accident suffered by any of the Company's vessels, a voyage entered upon cannot be completed, the Captains and agents thereof shall take care to insure the forwarding of the correspondence to the ports of destination

los medios más expeditos que estén á sus alcances.

48

Queda prohibido el transporte de otra clase de correspondencia que la que proceda de la Administración pública española.

Cualquiera infracción en esta punto, así como de las disposiciones vigentes, sobre transporte é inviolabilidad de la correspondencia, serán castigadas con areglo á las Leyes.

De los servicios comerciales y de los transportes de pasajeros, mercancías y material del servicio del Estado

49

La Empresa podrá efectuar en sus buques toda clase de transportes de pasajeros y mercancías y hacer todas las operaciones de comercio que no perjudiquen á los servicios que debe prestar al Estado, siendo sus productos propiedad de la Empresa concesionaria.

El contratista someterá á la aprobación del Ministerio de Ultramar las tarifas que han de regir desde los puertos de España á los demás que visiten los buques, y viceversa.

Estas tarifas serán establecidas sobre las bases siguientes:

Ni las de pasaje, ni las de carga entre España y los puertos que visiten los buques y viceversa podrán exceder de las que para iguales destinos rijan ordinariamente en servicios postales extranjeros paralelos.

Para los puertos servidos en combinación, deberán ser inferiores en un 10 por 100. Cuando la demora que ocasione el transbordo que deban sufrir los pasjeros con destino á puertos servidos por combinación en el puerto de escala donde éste se efectúe, exceda de tres días, el concesionario, si el pasajero lo pidere, deberá conducirle por su cuenta al puerto extranjero en que más inmediatamente toque la línea que sirva directamente el de su destino.

Los precios de pasaje y carga de y para España no serán nunca superiores á los que el contratista tenga para el extranjero.

Para conciliar los intereses del Estado y del concesionario, el Gobierno mandará

by the most expeditious means within their reach.

48

The transportation of correspondence of any kind other than that proceeding from the Spanish Government offices is hereby prohibited.

Any violation of this provision, or of existing laws relating to the transportation and inviolability of correspondence, shall be punished according to law.

Of commercial services and the transportation of passengers, merchandise, and Government property.

49

The Company may employ its vessels in the transportation of all manner of passengers and merchandise, and engage in all trade operations which shall not be prejudicial to the services it must render the State, the proceeds thereof being the property of the concessionary Company.

The contractor shall submit for the approval of the Ministry of the Colonies the tariffs to be put into effect between the ports of Spain and the others its vessels may visit, and *vice versa*.

These tariffs shall be drawn up upon the following basis:

Neither the passenger nor the freight rates between Spain and the ports visited by the vessels, and *vice versa*, shall exceed those which are charged ordinarily for the same points by parallel foreign mail lines.

For ports served through connections they shall be less by ten per cent. When the delay occasioned by the transhipment of passengers bound to ports served by connections at the way port where the connection must be made exceeds three days, the concessionary, should the passenger so desire, must, at its own expense, transport him to the nearest foreign port where the lime carrying him directly to his destination touches.

The passenger and freight rates to and from Spain shall never be higher than those the contractor charges for foreign service.

In order to reconcile the interests of the Government and the concessionary, the

revisar anualmente las tarifas y resolverá, teniendo en cuenta la contabilidad de aquél y su estado económico.

También tendrá el Gobierno el derecho de rebajar las tarifas, aunque se mantengan dentro de las condiciones de este artículo, pero las que nuevamente se establezcan no serán obligatorias para la Compañía hasta que las líneas produzcan el excedente de que trata el artículo 7.º

El contratista se obliga á transportar, por un 50 por 100 de sus tarifas, aquellos artículos cuyo desarrollo ó movimiento quiera fomentar el Gobierno, dentro de los límites siguientes:

A las Antillas, anualmente, hasta	1.000	toneladas
De las Antillas	1.000	"
A Filipinas	500	"
De Filipinas	500	"

Los productos que deban gozar de esta ventaja erán designados por el Gobierno al principio de cada año, y los remitentes serán atendidos por la Compañía según el orden en que hubiesen solicatado el embarque de las mercancías, y en igualdad circunstancias, á prorrata de sus pedidos.

50

La Compañía se compromete á montar un servicio relacionda con todas líneas regulares extranjeras, que por la vía más rápida posible le permita expedir pasajeros y dar conocimiento para todas los puertos del mundo visitados por líneas marítimas regulares.

Todos los Agentes de la Compañía, que serán españoles, estarán provistos de muestrarios de productos de la Península y sus posesiones de Ultramar, y de notas de precios de los mismos. Estos muestrarios serán suministrados por el Gobierno á la Compañía.

Los Agentes estarán obligados á efectuar al tipo y condiciones usuales el seguro de las mercancías de cuya condución se encargue la Compañía, á transmitir á los productores de los géneros que aparezcan en los muestrarios los pedidos de los mismos que se le dirijan; á gestionar el reembolso del importe de los géneros ven-

Government shall order an annual revision of the tariffs, and shall reach a decision bearing in mind the accounts of the concessionary and its financial condition.

The Government shall also have the right to reduce the tariffs, although they shall be within the requirements of this article; but such as are newly established shall not be obligatory upon the Company until the lines shall yield the surplus to which Art. 7 refers.

The contractor binds himself to transport, at 50 per cent. of its tariff rates, such articles the development of or trade in which the Government desires to encourage, within the following limits:

To the West Indies, annually, up to	1,000	tons.
From the West Indies	1,000	"
To the Philippines	500	"
From the Philippines	500	"

The products which are to enjoy this privilege shall be designated by the Government at the beginning of each year, and the shippers shall be recognized by the Company in the order in which they shall have requested the shipment of their merchandise, and when several similar shipments are requested to apportion space *prò rata*.

50

The Company binds itself to furnish a service connected with all regular foreign lines, which shall by the most rapid route permit it to carry passengers and invoice to all the ports of the world visited by regular maritime lines.

All the agents of the Company, and they shall be Spaniards, must be furnished with collections of samples of the products of the Peninsula and its colonial possessions, together with the prices thereof. These collections will be furnished to the Company by the Government.

The agents are bound to insure, at the usual rates, and under the prevailing conditions, the merchandise which shall be entrusted to the Company for transportation; to transmit to the producers of the articles appearing in the collections, the orders for the same that may be addressed to them, and to negotiate for reimburs-

didos dentro de las condiciones de cambio más ventajosas posibles para el productor.

El concesionario quedará en libertad de adoptar las precauciones que considere necesarias para precaverse de la falta de solvencia en que pudieran incurrir las personas con quienes trate.

Los Agentes deberán hacer llegar á la Compañía, y ésta al Gobierno, cuantos noticias juzguen conducentes al desarrollo de la producción nacional.

En el transporte de mercancías, el concesionario concederá la preferencia, en iguales condiciones, á los embarques del comercio español, siempre que el pedido del hueco haya sido hecho á sus Agentes con la anticipación debida, dentro de los plazos que el contratista señale.

51

El precio de pasaje de los emigrantes de España será siempre 10 por 100 más bajo para nuestras colonias que para los países extranjeros.

Para favorecer el desarrollo de determinadas corrientes de emigración, la Compañía, á propuesta del Gobierno, embarcará con una rebaja de 20 por 100 sobre sus tarifas ordinarias el número de emigrantes que á continuación se expresan:

500 anuales entre España y sus Antillas, y

500 idem. id. y Filipinas.

Si el Gobierno quisiera favorecer en Cuba la inmigración negra ó asiática, rebajará el contratista el 15 por 100 de sus tarifas.

52

En la línea de Marruecos, en épocas de ferias y fiestas, el contratista se comprometerá á transportar por el 10 por 100 de sus tarifas hasta 2.000 súbditos marroquíes, escalonándolos en la medida que permita la cabida de los buques.

Los Agentes comerciales á quienes el Gobierno juzgara oportuno conceder pasaje en los líneas objeto de este concesión, disfrutarán el beneficio de la tarifa oficial.

53

El Gobierno podrá disponer de la

ing the producer for the value of the goods sold under the most advantageous conditions of exchange possible.

The concessionary is at liberty to adopt such precautions as he may consider necessary to save himself from the effects of the insolvency of persons with whom he may deal.

The agents shall make known to the Company, and the latter to the Government, all information which they may deem conducive to the development of national production.

In the transportation of merchandise the concessionary shall give preference, under like conditions, to the shipments of the Spanish trade, provided that the request for space shall have been made to his agents in due time and within the period designated by the contractor.

51

The passenger rates for emigrants from Spain shall always be 10 per cent. less to our colonies than to foreign countries.

In order to favor the development of certain currents of emigration, the Company, at the request of the Government, shall embark at a rebate of twenty per cent. on its ordinary tariffs the number of emigrants below mentioned:

500 annually from Spain to its West Indies, and

500 annually from Spain to the Philippines.

Should the Government desire to favor negro or Asiatic immigration into Cuba, the contractor shall make a rebate of fifteen per cent.

52

During festival and feast occasions the contractor binds himself to carry on the Morocco line at ten per cent. of its tariff rates, up to 2,000 Morocco subjects, scaling them in proportion to the capacity of the vessels.

Commercial travelers, whom the Government shall deem it proper to give passage on the lines covered by this concession, shall enjoy the benefits of the official tariff.

53

The Government shall have the dispo-

cuarta parte de las plazas destinadas á bordo de los buques para pasajeros, con el fin de transportar á todos los individuos activos y licenciados del Ejército y Armada, y á todos los funcionarios de las demás carreras del Estado que destine á las provincias y posesiones de Ultramar ó puertos del extranjero, ó que regresen de unos á otros; á los licenciados de establecimientos penales, y á los individuos que á ellos sean conducidos; á las hermanas de la Caridad y á los misioneros que se dirijan de que unos á otros territorios españoles; á los deportados; á los náufragos, y á los pobres que se hallen bajo el amparo de la autoridad; y, finalmente, á las mujeres, hijos y madres viudas de los Jefes y Oficiales del Ejército y Armada, de los funcionarios públicos que quedan expresados, y de los individuos de la Guardia Civil que se hallen en el mismo caso.

El Gobierno, avisando con quince días de anticipación, podrá disponer hasta de la tercera parte de las plazas destinadas á bordo de los buques para pasajeros, con el fin de transportar á todos los individuos que quedan mencionados.

Los precios de transporte para todos los pasajes de las personas mencionadas serán inferiores á los señalados en las tarifas generales del contratista, los de primera y segunda clase en un 30 por 100; los de tercera de Cuba en un 60 por 100, y los de las otras líneas en un 35 por 100 respecto de los puertos visitados por los buques correos. En cuanto á los puertos que figuren en los servicios combinados, la rebaja será solamente de un 20 por 100 para todas las clases.

Si el contratista estableciera diferentes categorías de primera, el Gobierno determinará asimismo el pasaje correspondiente á cada una.

54

El Gobierno se obliga á transportar á todas las personas de las clases mencionadas, por los buques de la Empresa siempre que con arreglo á las disposiciones vigentes en la materia haya de abonarles ó anticiparles pasaje por cuenta del Estado, pues de verificarlo por cuenta propia, quedarán libres de dirigirse á sus destinos por la vía que más les convenga.

sition of one-fourth of the space provided on board the vessels for passengers for the purpose of transporting all active and discharged men of the army and navy, and all the officials in the other services of the State that it may detail to the colonial provinces and possessions and to foreign ports, or who may return from either; to the discharged from penal settlements and to those being conducted thither; to sisters of charity and the missionaries bound to any of the Spanish territories; to the deported; to the shipwrecked and to the poor under the protection of the Government; and, finally, to the wives, children and widowed mothers of the officers of the army and navy, of the public officials above mentioned and of the members of the Civil Guard who are in similar conditions.

The Government, by giving a fifteen days' notice, may have at its disposal one-third of the space provided on board of the vessels for passengers for the purpose of transporting all the persons above mentioned.

The rates for all the persons mentioned shall be less than those designated on the general tariffs of the contractor by thirty per cent. for first and second class, by sixty per cent. for third class to Cuba, and on the other lines by thirty-five per cent., according to the ports visited by the mail steamers. As regards the ports figuring in the connecting service, the rebate shall only be twenty per cent. for all classes.

Should the contractor establish different grades in the first-class passage, the Government shall likewise determine the rate corresponding to each.

54

The Government binds itself to transport all the persons of the classes mentioned by the vessels of the company whenever, under the provisions of law in force in the premises, it shall have to furnish or advance their passage at public expense, since, should they travel at their own expense they would be free to go to their destination by whatever route best suiting their convenience.

Des esta obligación quedará el Gobierno exento en casos de urgencia extraordinaria en que la Compañía no pudiera habilitar, con la perentoriedad que se le exija, el número de barcos ó plazas que se necesiten para los transportes oficiales.

No se entenderá infringida esa obligación por el hecho de que el Gobierno, utilizando los barcos de guerra, conduzca armamentos ó pertrechos militares, y aun tropas si el interés del Estado lo hiciese necesario.

55

El trato y manutención de los sargentos, soldados y marineros transportados, serán los que se designan en la R. O. de 12 de Enero de 1867 (1).

Desde Suez á Manila, en los viajez de ida y vice-versa, se les dará además dos ó tres refrescos de limón al día.

56

En los precios señalados en el art. 53, quedan comprendidos el pasaje y la manutención que deberá facilitar el contratista á las tropas con sus Jefes y Oficiales, siempre que por orden del Gobierno se trasladen desde los puertos del litoral de la Península en que se hallan establecidos los depósitos de bandera para Ultramar, al punta en que esté surto el buque que haya de conducirles á las islas de Cuba, Puerto Rico y Filipinas. El contratista no podrá aplazar el transporte, y desde el momento en que se le notifique hallarse listos los individuos para embarque, deberá aprovechar para él la primera oportunidad, que nunca dilatará más de quince días, exceptuados los casos de fuerza mayor bien justificada.

57

Durante la estancia en el puerto de salida de los individuos del Ejercito á que se refiere el artículo anterior, hasta su embarque en el vapor que primero salga, será de cuenta del contratista la manutención, pero no el alojamiento. Este deberán facilitarlo las Autoridades militares hasta la salida del referido buque.

(1) Véase el Reglamento para la manutención de los pasajeros de tercera clase inserto en la página 220.

The Government is released from this obligation in cases of extraordinary urgency when the Company cannot prepare with the promptness demanded the number of vessels or spaces required for official transportation.

The fact of the Government utilizing warships for the transportation of arms or military stores, and even of troops, should the interest of the State render it necessary, shall not be considered an infringement of this obligation.

55

The treatment and subsistence of the sergeants, soldiers and sailors transported shall be those designated in the R. O. of January 12, 1867 (1).

From Suez to Manila, on the outgoing and incoming trips, they shall be furnished extra two or three lemon refreshments a day.

56

The rates mentioned in Article 53 shall include the passage and subsistence which the contractor must furnish to the troops with their officers, whenever by order of the Government they shall be transferred from the ports on the coast of the Peninsula where the military depots for the colonies are situated to the point where the vessel which is to conduct them to the Islands of Cuba, Puerto Rico and the Philippines is anchored. The contractor shall not delay the transportation, and from the moment in which he is notified that the troops are ready for embarkation, he must improve the first opportunity therefor, which shall never last more than fifteen days, save in case of well proven *force majeure*.

57

During the stay in the port of departure of the military troops to which the foregoing article refers, and until their embarkation on the first vessel leaving, their subsistence shall be at the expense of the contractor, but not their lodgment. This latter should be furnished by the military authorities until the said vessel sails.

(1) See the Regulations for the subsistence of passengers of the third class inserted on page 220.

Cesará para el contratista la obligación de mantener en el puerto de salida á los individuos del Ejército y Armado, si por enfermedad ó por cualquiera otras causas se quedaren en tierra al verificarse la expedición que debiera conducirlos.

Los gastos de cuarentena de los pasajeros oficiales y la manutención de los mismos durante este perído serán de cuenta exclusiva del concesionario.

58

En cada buque se llevará un libro-registro para recibir en él las quejas de los pasajeros referentes al servicio de los mismos, con relación al reglamento que el contratista queda obligado á formular respecto al trato que deba darse á aquéllos y orden y policía de cámaras, alojamientos y camareros, del cual facilitará al Ministerio de Ultramar 50 ejemplares é igual número al de Marina, dentro del primer mes del servicio, sometiendo antes el proyecto al primero de los dos Ministerios para su aprobación ó reforma (1).

La Junta de vigilancia de que trata el art. 36 examinará dichas quejas, y si estima que son dignas de consideración, dará cuenta de ellas al Ministerio de Ultramar.

59

La Empresa se obliga á recibir á bordo de sus buques hasta la décima parte del tonelaje disponible para carga, ó sea neto, en cada uno, en armas, pertrechos y toda clase de material del servicio del Estado. En los fletes de estos efactos se hará por el contratista una rebaja de 30 por 100 de los precios marcados en las tarifas adoptadas para el público.

El Gobierno se obliga á transportar en los buques de la Empresa todo el material del Estado que se expida de ó para las provincias de Ultramar, salvas las limitaciones que contiene el art. 54.

60

Cuando por disposición del Gobierno se embarcasen municiones de guerra, el contratista podrá exigir que en conduc-

(1) El Reglamento de referencia va inserto en el primer Apéndice de este mismo capítula I.

If through sickness or any other causes the men of the army or navy should remain on land upon the sailing of the expedition which should carry them, the obligation of the contractor to subsist them in the port of departure shall cease.

The quarantine expenses of official passengers and the subsistence of the same during this period shall be exclusively chargeable to the concessionary.

58

Each vessel shall carry a record book wherein shall be noted the complaints of passengers with respect to the treatment of the same, pursuant to the regulations which the contractor is bound to draw up regarding the treatment to be accorded the passengers and the order and policing of staterooms, berths and stewards, of which the Ministry of the Colonies shall be furnished 50 copies and the Ministry of Marine an equal number, within the first month of the service, first submitting the original to the former of the two Ministries for its approval or amendment (1).

The board of inspection referred to in Art. 36 shall examine the said complaints, and should it deem them worthy of consideration shall report the same to the Ministry of the Colonies.

59

The Company binds itself to receive on board of its vessels up to one-tenth part of the available freight tonnage, or net tonnage, on each vessel in the way of arms, stores and all kinds of material for the public service. The contractor shall make a rebate of thirty per cent. on the prices given in the tariffs adopted for the public for these articles.

The Government binds itself to transport on the vessels of the Company all public property which may be sent to or from the colonial provinces, save the limitations contained in Art. 54.

60

When by order of the Government munitions of war shall be taken on board the contractor may require that their

(1) The regulations referred to are inserted in the first Appendix to this same chapter I.

ción y envase se efectúe en la forma y con las precauciones necesarias para evitar exposiones y siniestros.

61

Sean cualesquiera los precios de las tarifas y las deducciones que en ellas deban hacerse á favor del Estado, la conducción del tabaco que desde Filipinas, Cuba, Puerto Rico ú otros puertos de América haya de trasladarse á la Península, con destino á las fábricas nacionales, no podrá costar al Estado en ningún caso más que 10,65 pesetas cada quintal (castellano), conducido desde Filipinas, y 8 pesetas cada uno de los que embarquen en América. Si se llegare á realizar el arrendamiento del monopolio de fabricación y venta del tabaco, el contratista no estará obligado á valerse para el transporte de aquél de los buques de la Compañía, ni ésta tampoco á hacerlo al contratista en las mismas condiciones señaladas al Estado.

De la fianza

62

Los buques destinados á este servicio, sean ó no propiedad del contratista, quedarán especialmente obligados y afectos al cumplimiento del contrato, sin que en ningún caso, ni por concepto, pueda aquél hacerlos responsables de ninguna otra obligación ni crédito.

Al efecto, el contratista, al presentar los buques en los plazos que señalan los arts. 22, 23 y 24, declarará que no se hallan previamente hipotecados, ni gravados, ni dados en garantía en cualquier forma en el reino ó en el extranjero en daño del servicio, obligándose á mantenerlos así todo el tiempo de duración del contrato, cuya declaración llevará consigo la oportuna declaración civil y criminal para el caso de resultar falsa. Al mismo fin se admitirá en cualquier tiempo, á quien quiera que la presente, la justificación del gravamen de dichos buques, anterior ó posterior á la época de su presentación, mediante la cual se exigirá al contratista la responsabilidad correspondiente.

En el caso de que los buques no sean propiedad del contratista, tendrá éste ob-

transportation and packing shall be done in the manner and with the necessary precautions to avoid explosions and disaster.

61

Whatever may be the tariff rates and the reductions thereof made for the Government, the transportation of tobacco from the Philippines, Cuba, Puerto Rico and other ports of America intended for the national manufactories, shall in no case cost the Government more than 10.65 *pesetas* per quintal (Spanish) when brought from the Philippines, and 8 *pesetas* when shipped from America. Should the farming out of the manufacture and sale of tobacco be realized, the contractor therefor shall not be bound to make use of the vessels of the Company for the transportation of the latter, nor shall the Company be compelled to carry it for the contractor under the same conditions as for the Government.

Of the bond.

62

The vessels devoted to this service, whether or not owned by the contractors, shall be especially bound and held to the performance of the contract, without, in any case, or under any circumstances, his having the right to make them security for any other obligation or loan.

To this end the contractor on furnishing the vessels within the terms designated in Articles 22, 23 and 24, shall declare that they are not previously mortgaged, or encumbered, or held as security in any way in the Kingdom or abroad to the detriment of the service; binding himself to so keep them during the whole life of the contract, which declaration shall carry with it civil and criminal liability, should it result false. To this same end, proof of an encumbrance on said vessels before or after their presentation will be accepted at any time, pursuant to which the contractor will be held to strict accountability.

In case the vessels are not owned by the contractor, the latter is bound to pre-

ligación de presentar al Gobierno copia de la escritura que haya celebrado con el dueño. Esta escritura habrá de contener necesariamente la cláusula de que el propietario conoce en toda su extensión y acepta por su parte las condiciones con que el contrato se hace, renunciando sus derechos en todo cuanto éstos puedan hacerlas ineficaces.

En el caso de falti parcial ó total de lo estipulado, ó de interrupción total ó parcial del servicio por culpa del contratista, el Gobierno se apoderará del buque ó buques que estén destinados al mismo servicio ó que hayan sido admitidos con el propio objeto, y con dichos buques lo ejecutará la Administración á cargo y por cuenta del concesionario.

Éste garantizará, además, el cumplimiento de lo pactado, consignando en la Caja general de Depósitos, ó en el Banco de España, 8.500.000 pesetas en matálico ó en efectos públicos del Estado, al tipo que las disposiciones vigentes les atribuyan para la constitución de fianzas.

63

El depósito mencionada quedará reducido á 1.275.000 pesetas, cuando todos los buques de las líneas estén en servicio; esta reducción se hará proporcionalmente, según vayan siendo admitidos los vapores de la Compañía.

De los casos extraordinarios y de guerra

64

En casos de guerra marítima ó de hostilidades en algunos de los mares ó puertos visitados por la Compañía, el Gobierno será responsable de las eventualidades que pudieran resultar de dicha guerra, á no ser que haya dejado á aquélla en libertad de suspender el servicio ó de no tocar en los puertos donde hubiere hostilidades.

En el caso de suspenderse el servicio, el tiempo transcurrido desde la suspensión hasta su nuevo establecimiento se comprenderá ó no en la duración del contrato, á elección de la Empresa.

Suspendido el servicio, el Estado podrá tomar posesión de los buques con su material y pertrechos, haciéndose de todo un avalúo por una comisión, compuesta

sent to the Government a copy of the instrument he shall have entered into with the owner. This instrument must necessarily contain a clause showing that the owner is fully acquainted with, and accepts on his part, the conditions of the contract, relinquishing his rights in so far as the latter shall render the former inoperative.

In case of partial or total failure to perform what is stipulated, or of a partial or total interruption of the service through fault of the contractor, the Government shall take possession of the vessel or vessels that may be employed in the service or which may have been accepted for the purpose, and shall continue the same with said vessels at the expense of the concessionary.

The latter shall, moreover, guarantee the performance of what is stipulated, by depositing in the General Trust Deposit or in the Bank of Spain 8,500,000 *pesetas* in coin or in Government securities at the rate that existing laws give them for the furnishing of security.

63

The said deposit shall be reduced to 1,275,000 *pesetas* whenever all the vessels of the line are in service. This reduction to be made in proportion as the steamships of the Company are accepted.

Of extraordinary cases and of war.

64

In the event of naval war or of hostilities in any of the seas or ports visited by the Company, the Government shall be responsible for the contingencies that may result from such war, unless it shall have left the former at liberty to suspend the service or to not call at the ports where hostilities are in progress.

In case the service is suspended, the time elapsing from the suspension to the resumption of the service may or may not be included within the contract term, at the election of the Company.

The service once suspended, the Government may take possession of the vessels with their supplies and stores, an appraisement being made of all by a com-

de dos personas elegidas por el Gobierno y dos por el contratista.

Estos individuos, por mayoría de votos, designarán una quinta persona, en quien recaerá la presidencia; y en caso de empate en la designación, decidirá la suerte de entre los individuos compredidos en una lista formada de común acuerdo.

A la terminación de la guerra serán devueltos al contratista los buques con su material, previa la indemnización á que diera lugar su menor valor, á juicio de la expresada comisión.

El Gobierno pagará á la Empresa, durante el tiempo que tenga á su servicio los buques, el 5 por 100 del capital que éstos representen, según el juicio de la citada comisión. Todo otro pago quedará suspendido durante la interrupción del servicio por la Empresa.

65

Si el Gobierno no usare la facultad que le corresponde en virtud del párrefo tercero del precedente artículo, abonará á la Empresa, desde el día en que cerrare el servicio hasta la terminación de la guerra, el interés de un 5 por 100 del capital que representen los buques y pertrechos, según avalúo de la comisión.

66

Al terminar la guerra, el Ministerio de Ultramar, oyendo al Consejo de Estado, podrá relevar á la Empresa del cumplimiento del contrato si los acontecimientos de aquélla la hubiesen colocado en la imposibilidad de continuar el servicio.

67

En circunstancias políticas extraordinarias, y sin que ocurra el caso de guerra marítima, el Gobierno podrá fletar uno ó varios buques de la Empresa.

Cuando esto tengar lugar, la indemnización á que la Empresa fuere acreedora será justiprecida por la comisión que se menciona en el art. 64.

Si el Gobierno dispusiera de más de un buque, el contratista no estará obligado á hacer el número de viajes estipulado en el

mission composed of two persons selected by the Government and two by the contractor.

These parties by a majority vote shall designate a fifth party, who shall be the chairman; and in case of a tie in the vote the matter shall be decided by lot from among the persons named on a list made up by common agreement.

At the termination of the war the vessels with their belongings shall be returned to the contractor, after payment of the indemnity that may be due by reason of their diminished value in the opinion of the said commission.

The Government shall pay to the Company, during the time it has vessels in its service, five per cent. of the capital they represent, according to the judgment of the said commission. All other payments shall be suspended during the interruption of the Company's service.

65

Should the Government not exercise the authority attaching to it by reason of the third paragraph of the preceding article, it shall allow the Company from the day on which it stops the service to the close of the war five per cent. interest on the capital the vessels and stores represent, as per the appraisement of the commission.

66

Upon the termination of the war the Ministry of the Colonies, after hearing the Council of State, may relieve the Company of the performance of the contract should the casualties of the war have incapacitated it from continuing the service.

67

Under extraordinary political conditions, and though there be no naval war, the Government may charter one or several of the Company's vessels.

In this event the indemnity to which the Company shall be entitled shall be estimated by the commission referred to in Art. 64.

Should the Government take more than one vessel the contractor shall not be bound to make the number of trips stipu-

contrato; un arreglo especial, hecho de común acuerdo, fijará entonces las alteraciones que se hayan de hacer en el número y época de los viajes. Esto mismo tendrá lugar cuando por cuaso de guerra el Estado se hubiese incautado de los barcos de la Empresa y el terminar aquélla no devolviese todos los que había recibido ó los volviese inútiles para prestar los servicíos del presente contrato.

lated in the contract. A special arrangement made by common accord shall then establish the changes that are to be made in the number and dates of the trips. The same shall be the case when by reason of war the Government takes possession of the vessels and upon its conclusion does not return all those received, or returns them incapable of rendering the services covered by this contract.

De la sanción penal

Of penalties.

68

68

Si el contratista no presentare los buques destinados á los líneas principales de correos á las Antillas, Filipinas y Buenos Aires para ser recibidos según lo dispuesto en los arts. 22, 23 y 24, quedará árbitro el Gobierno de rescindir el contrato, con pérdida de la fianza, ó de imponer á aquél una multa de 150.000 pesetas.

Si antes del día en que deban empezar los servicios no estuvieren admitidos, por no tener las condiciones prevenidas, los buques necesarios para empezar los servicios de las Antillas y Filipinas, se impondrá al contratista una multa de 150.000 pesetas por cada uno de los buques que falten.

Si en los plazos marcados en el referido articula para la presentación de los restantes buques no los presentase el contratisto, ó no fueren admitidos por no merecerlo, incurrirá éste en la multa de pesetas 150.000 per cada uno de los que falten para completar el servicio. Si el contratista no estuviera en disposición de comenzar en las fechas señaladas los servicios de Buenos Aires, Fernando Póo y Marruecos, la multa será, respecto del primero, de 100.000 pesetas; respecto del segundo, de 800.000, y respecto del tercero, de 600.000.

Should the contractor not present for acceptance the vessels intended for the principal mail lines to the West Indies, Philippines, and Buenos Aires, according to the provisions of Articles 22, 23 and 24, the Government shall be empowered to annul the contract, with forfeiture of the bond, or to impose a fine of 250,000 *pesetas*.

If prior to the day on which the service is to be entered upon the necessary vessels to begin the West Indian and Philippine service are not accepted by reason of not meeting the prescribed requirements, a fine of 150,000 *pesetas* will be imposed upon the contractor for each of the vessels lacking.

If within the terms designated in the article relating to the presentation of the remaining vessels the contractor does not produce them, or they are not accepted because they are not entitled to it, the contractor shall incur a fine of 150,000 *pesetas* for each vessel lacking to complete the service. Should the contractor not be in a position to commence on the designated dates the Buenos Aires, Fernando Po and Morocco service, the fine shall be in the first instance 100,000 *pesetas*, in the second 800,000, and in the third 600,000.

69

69

Si el contratista dejare de hacer alguna de los expediciones á que queda obligado, incurrirá en la multa de 150,000 pesetas en las líneas de Cuba y Filipinas, y de 100.000 en la línea de Buenos Aires, 80.000 en la de Fernando Póo y 60,000 en la de Marruecos.

Cuando dejare de realizar una expedición servida por combinación por haberse

Should the contractor fail to make any of the trips to which he is bound he shall incur a fine of 150,000 *pesetas* on the Cuban and Philippine lines, 100,000 on the Buenos Aires line, 80,000 on the Fernando Po, and 60,000 on the Morocco.

When he fails to make a trip having a connection, owing to the impossibility of

hecho ésta imposible, dejará prescribir la subvención correspondiente al recorrido no servido. Si la combinación resultare imposible para los viajes sucesivos, el contratista estará además obligado á devolver la mitad de las subvenciones que por ella hubiere recibido.

70

Si no tuviere dispuestos los buques en la forma que ordena el artículo 13, pagará una multa de 5.000 pesetas.

71

Si la salida de los buques se retardase por culpa del contratista, pagará éste una multa de 10.000 pesetas, y se amentarán 5.000 por cada día empezado sin que salga el buque, hasta el quinto día, en que se declarará no hecha la expedición, é incurso el contratista en la multa de 150.000 pesetas.

Llegado el caso de aplicar esta multa por falta de expedición, no se exigirán las multas parciales que quedan establecidas.

Estas cantidades quedan reducidas, respectivamente, á 5.000, 2.500 y 100.000 para Buenos Aires; á 4.000, 2.000 y 80.000 para Fernando Póo; á 3.000, 1.500 y 60.000 par Marruecos.

72

En el esso de que la marcha media anual señalada por este contrato á los vapores en cada una de las líneas no se hubiere completado en todas ó en alguna de éstas, se hará al concesionario un descuento de la subvención asignada á la línea respectiva, conforme á las bases siguientes:

Si la marcha realizada por término medio durante el año fuese inferior al mínimum obligatorio en un cuarto de milla por hora, el descuento será de 1,25 por 100 del total de la subvención correspondiente al recorrido anual de la línea. La retención será de 2,50 por 100 si la diferencia fuere de media milla; de 3,75 por 100 si de tres cuartos de milla, y, en fin, de un 5 por 100 por cada milla completa.

Estos descuentos se aumentarán en un 25 por 100 para las líneas de las Antillas y Filipinas.

Siempre que la diferencia exceda de

making the latter, he shall allow the subsidy corresponding to the trip not made to lapse. Should the connection result impossible in subsequent trips, the contractor is moreover bound to return one-half of the subventions he may have received therefor.

70

Should he not have the vessels ready in the manner required by Article 13, he shall pay a fine of 5,000 *pesetas*.

71

Should the departure of vessels be delayed through fault of the contractor he shall pay a fine of 10,000 *pesetas*, and 5,000 shall be added for every day begun without the vessel sailing, up to the fifth day, when the trip will be declared off, and the contractor liable to the fine of 150,000 *pesetas*.

Should the case arise of imposing this fine for failure to make the trip, the partial fines mentioned shall not be exacted.

These amounts are reduced respectively to 5,000, 2,500 and 100,000 for Buenos Aires; 4,000, 2,000 and 80,000 for Fernando Po, and 3,000, 1,500 and 60,000 for Morocco.

72

In case the mean annual speed designated by this contract for the steamships on each of the lines shall not have been kept up on all of them, the concessionary shall suffer a reduction of the subsidy assigned to the respective line, upon the bases following:

If the average speed realized during the year is less than the minimum obligatory by a quarter of a mile per hour the rebate shall be 1.25 per cent. of the total subsidy corresponding to the annual run of the line. The rebate shall be 2.50 per cent. if the difference is a half mile; 3.75 per cent. if three-quarters of a mile, and, in short, 5 per cent. for each full mile.

These rebates shall be increased 25 per cent. on the West Indian and Philippine lines.

Whenever the difference shall exceed

una milla, se requerirá al concesionario para que reemplace aquel ó aquellos vapores que durante el año no hubieren alcanzado la marcha media obligatoria.

La Compañía está obligada al reemplazo de cada uno de los barcos en el término de diez y seis meses, á contar desde la fecha del requerimiento.

El importe de las retenciones será descontado por el Gobierno, de las sumas que se deban al concesionario.

Para el debido cumplimiento de las cláusulas de este artículo, se formará al final de cada año, por las dependencias del Ministerio de Marina, un estado de la duración de cada traversía en cada una de las líneas de la concesión, exceptuando las combinadas, con las deducciones procedentes por permanencia en los puertos de cada escala, y en la línea de Filipinas; las concedidas por contramonzones y suciedad de fondos.

El total por línea establecerá la velocidad media anual, y, por consiguiente, el descuento que se impondrá á la Compañía (1).

(1) Por R. O. de 5 de Octubre de 1888, se declara: *Primero.* Que las Juntas inspectoras de que trata el art. 36 de este contrato, tienen atribuciones para revisar los cuadernos de bitácora y de vapor de los buques, según expresa el artículo 38, puesto que uno de los puntos más importantes, tratándose de vapores correos y de conocer que éstos se conservan constantemente en buen estado de servicio, es comprobando que continúan sosteniendo la misma velocidad exigida para el desempeño de aquél.—*Segundo.* Que el promedia de andar en cada travesía debe deducirse en la forma marcada en el art 72 por la duración del viaje y el recorrido oficial.—*Y Tercero.* Que una vez admitido un buque bajo las condiciones marcadas en el art. 30, no procede en los reconocimientos sucesivos proponer variación alguna en su distribución y pertrechos, y sí solamente asegurarse de que todo ello se conserva en el buen estado en que se encontraba cuando fué reconocido para su admisión.

Nota.—Véase R. O. de 21 de Marzo de 1890, trasladando otra del Ministerio de Ultramar, de acuerdo con informe del Consejo de Estado en pleno, en la que se consigna que si bien las deficiencias de velocidad puedan dar lugar al reemplazo del buque que los padezca, esas deficiensias han de exceder, para el caso, de una milla en el promedio anual, y que este promedio no puede averiguarse por el resultado de uno ó varios viajez, sino por la suma de todos los de un año, en la oportunidad que determina el art. 72 del contrato.

one mile the concessionary shall be required to replace the vessel or vessels that during the year shall not have reached the obligatory mean speed.

The Company is bound to replace each of the vessels within the term of sixteen months reckoned from the date of the notice.

The amount of the rebates shall be deducted by the Government from the sums that may be due the concessionary.

For the due enforcement of the clauses of this article there shall be drawn up at the end of each year by the dependencies of the Ministry of Marine a statement of the duration of each trip on each of the subsidized lines, excepting the connecting, with the deductions growing out of stays at the ports of each route, and, on the Philippine line, the allowance for delays caused by monsoons and foul bottoms.

The total duration of trips per line shall establish the mean annual speed, and, consequently, the deductions to be imposed upon the Company (1).

(1) By R. O. of October 5, 1888, it is declared: *First.* That the inspection boards, of which Article 36 of this contract treats, have authority to inspect the log books and steam logs of the vessels, as mentioned in Article 38, since one of the most important points, when treating of mail steamers and endeavoring to discover whether they are constantly kept in a good serviceable state, is to prove that they continue maintaining the speed required for the performance of their service. *Second.* That the average speed on each trip should be discovered in the manner mentioned in Article 72 by the duration of the trip and the official run. *Third.* That a vessel once accepted under the conditions named in Article 30, it is not proper to propose in subsequent inspection any change in her arrangements and stores, but only to make sure that everything is kept in the good condition it was when she was inspected for acceptance.

Note.—See R. O. of March 21, 1890, transmitting another through the Ministry of the Colonies, pursuant to a report of the full Council of State, in which it is set forth that although speed deficiencies may give cause for replacing the vessel suffering the same, the deficiencies must exceed one mile in the yearly average, and that this average cannot be ascertained by the result of one or several voyages, but by the sum of those of one year in the manner mentioned in Article 72 of the contract.

73

Cuando hubiere transcurrido el plazo de diez y seis meses, que los arts. 28 y 72 señalan para reponer el buque perdido ó inútil, sin la presentación del que haya de sustituirle, el contratista incurrirá en la multa de 150.000 pesetas y quedará obligado á presentarle en nuevo término de seis meses, pagando, de no hacerlo, otra multa de igual cantidad.

74

Si el Capitán no recogiese la correspondencia ó cometiese alguna falta, que produjese pérdida de ella, incurrirá el contratista en la multa de 40.000 pesetas. En el caso de que por culpa ú omisión del Capitán sufra deterioro la correspondencia, pagará el contratista 15.000 pesetas.

75

Por las faltas que cometan el contratista ó sus dependientes en los servicios á que se refiere el art. 58, se exigirán á aquél multas proporciondas, á juicio del Ministerio de Ultramar.

76

Las multas señaladas en este capítulo (De la sanción penal), se impondrán gubernativamente con sólo tenerse notocia oficial de los hechos que las motivasen, y se tomarán del depósito á que se refieren los arts. 62 y 63, debiendo reintegrarlo el contratista en al plazo improrrogable de ocho días, contados desde que por la Caja de Depósitos se haga la oportuna retención. La falta de reposición del depósito se considerará motivo para la rescisión del contrato, quedando el contratista responsable de los daños y perjuicios que su falta irrogue á la Hacienda, en todo lo que éstos superen á los restos de la fianza.

77

Las multas expresadas en los artículos anteriores se entenderán sin perjuicio de la responsabilidad criminal y de las indemnizaciones de daños y perjuicios á que hubiere lugar en cada caso, y sólo dejarán de ser exigibles en el caso de fuerza mayor, acreditada en debida forma.

73

When the term of sixteen months established by Arts. 28 and 72 for the replacing of a lost or disabled vessel shall have expired without the presentation of the substitute, the contractor shall incur a fine of 150,000 *pesetas*, and shall be bound to present it within another term of six months, paying, in default thereof, a further fine in the same sum.

74

Should the Captain fail to collect the correspondence or be guilty of some fault resulting in its loss, the contractor shall incur a fine of 40,000 *pesetas*. In case the correspondence suffers any injury through the fault or omission of the Captain, the contractor shall pay 15,000 *pesetas*.

75

For failures on the part of the contractor and his employees in the performance of the services to which Art. 58 refers, the former shall pay proportionate fines, within the judgment of the Ministry of the Colonies.

76

The fines mentioned under this head (Of penalties) shall be executively imposed merely upon official notice of the acts incurring them, and they shall be taken from the deposit to which Arts. 62 and 63 refer, the contractor having to make the latter whole within the absolute term of eight days reckoned from the time when proper retention is made by the Trust Deposit. Failure to reimburse the deposit shall be considered a cause for the annulment of the contract, the contractor being still liable for any damages his failure may entail upon the Treasury, in whatever sum they may exceed the remainder of the bond.

77

The fines mentioned in the foregoing articles shall be understood to be without prejudice to criminal liability and indemnities in the way of damages which may be proper in each case, and they shall only fail to be exacted in the case of *force majeure* proven in due form.

78

En el casa de que por tercera vez, en un año, incurra el contratista en cualquiera de las faltas á que se refieren el párrafo 1.° del art. 69, y los 70, 71 y 73 en relación con el 72, sancionadas con multa superior á 40.000 pesetas, podrá el Gobierno, dentro del mismo año, rescindir el contrato en cuanto á la línea a la cual las tres faltas se refieren.

Disposiciones adicionales.

1.ª Dentro de los dos primeros años, á contar desde el dia en que hubieren empezado á prestar los servicios de Buenos Aires, Marruecos y Fernando Póo, el Gobierno y el concesionario tendrán el derecho de renuncialos.

Si lo ejercitaren, el servicio á que la renuncia se refiere concluirá al vencimiento de los dos años, á menos que las partes contratantes se pusieran de acuerdo acerca de las condiciones en que habría de desempñarse en lo sucesivo.

2.ª El concesionario se obliga á no hacer el comercio de cabotaje entre puertos de la Península, ni el de carga desde los puertos de Europa á España y viceversa en la navegación subvencionada en virtud de este contrato.

3.ª No obstante lo fijado en la primera disposición transitoria, el Gobierno de S. M. podrá establecer, de acuerdo con la República Argentina, una expedición mensual subvencionada por ambas partes.

Ley de 26 de Junio de 1887.

78

Should the contractor, for the third time in one year, be guilty of any of the failures to which paragraph 1, of Art. 69, and Arts. 70, 71 and 73 in connection with 72 refer, punishable by a fine exceeding 40,000 *pesetas*, the Government may, within the same year, annul the contract as far as it relates to the line to which the three failures refer.

Additional provisions.

1. Within the first two years, reckoned from the day on which the Buenos Aires, Morocco and Fernando Po services shall have begun, the Government and the concessionary shall have the right to relinquish them.

Should they exercise this right, the service to which the relinquishment relates shall end at the expiration of the two years, unless the contracting parties should agree upon the conditions under which it shall be contracted in the future.

2. The concessionary binds himself to not carry on a coastwise trade between the ports of the Peninsula or a freight service from ports of Europe to Spain and *vice versa*, by means of the lines subventioned by virtue of this contract.

3. Notwithstanding what is established in the first transitory provision, the Government of H. M. may establish by agreement with the Argentine Republic a monthly service subsidized by both parties.

Law of June 26, 1887.

THE PANAMA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 127. Argued November 3, 1899. — Decided February 26, 1900.

No general rule of international law exempts mail ships from capture as prize of war.

A Spanish mail steamship, carrying mail of the United States from New York to Havana at the time of the breaking out of the recent war with Spain, was not exempt from capture by the sixth clause of the President's proclamation of April 26, 1898.

At the time of the breaking out of the recent war with Spain, a Spanish mail steamship was on a voyage from New York to Havana, carrying a general cargo, passengers and mails, and having mounted on board two breech-loading Hontoria guns of nine centimetre bore, and one Maxim rapid-firing gun, and having also on board twenty Remington rifles and ten Mauser rifles, with ammunition for all the guns and rifles, and thirty or forty cutlasses. Her armament had been put on board more than a year before, for her own defence, as required by her owner's mail contract with the Spanish Government, which also provided that, in case of war, that government might take possession of the vessel with her equipment, increase her armament, and use her as a war vessel, and, in these and other provisions, contemplated her use for hostile purposes in time of war. *Held*, that she was not exempt from capture as prize of war by the fourth clause of the President's proclamation of April 26, 1898.

THE statement of the case will be found in the opinion of the court.

Mr. J. Parker Kirlin for appellant.

Mr. Assistant Attorney General Hoyt for appellees. *Mr. Joseph K. McCammon* and *Mr. James H. Hayden*, of counsel for the captors, were on his brief.

Mr. George A. King and *Mr. William B. King*, solicitors for certain captors, filed a brief on their behalf.

MR. JUSTICE GRAY delivered the opinion of the court.

This was a libel for the condemnation of the steamship Panama as prize of war, and was heard in the District Court upon the libel, the claim of the master in behalf of the owner of the vessel, and the depositions *in preparatorio* of her master, her supercargo, and her chief engineer, which showed the following state of facts:

The Panama was a steamship of 1432 tons register; was owned by the Compania Transatlantica, a corporation of Barcelona in Spain; sailed under the Spanish flag; had a commission as a royal mail ship from the Government of Spain; carried a crew of 71 men all told, who had been shipped at different times at Havana; and her usual course of voyage included the ports of New York and Havana, and Progreso, Vera Cruz and other Mexican ports, with general cargoes, passengers and mails.

Opinion of the Court.

Her last voyage began in Havana, for a round trip by way of New York, and was to have ended in Vera Cruz. She sailed from New York at half past two o'clock in the afternoon of April 20, 1898, with a clearance from the custom-house at that port for Havana, Progreso, and Vera Cruz, having on board the United States mails, 29 passengers (all Spaniards except one Frenchman) and a general cargo, the produce or manufacture of the United States, shipped at New York, and to be delivered, at the risk of the shippers, to consignees at those ports. She pursued the usual course of ships bound southward along the coast until she passed Alligator Reef light on the coast of Florida, and then bore away for Havana, and sighted the Cuban coast on the morning of April 25; and on that day, when about twenty-five miles from Havana, was captured by the United States ship of war Mangrove, and was sent in charge of a prize crew into Key West. She had no military or naval officer on board, made no resistance to the capture, and delivered all her papers and mails to the prize master.

There were mounted on board the Panama, at the time of her capture, five guns: Two breech-loading Hontoria 9 centimetre guns, one on each side of the ship, with 30 rounds of shot for each; one Maxim rapid-firing gun, on the bridge, with ammunition; and two signal guns, one on each side of the pilot house, with ammunition. She also had on board about twenty Remington rifles, and ten Mauser rifles, with ammunition for each, and about thirty or forty cutlasses. The cannon had been put on board about three years before, and the small arms and ammunition had been on board a year or more. She was so armed in accordance with a contract with the Spanish Government, which required all the mail steamships of the company to be armed, and article 26 of which was as follows: "Every ship shall take on board, for her own defence, the following armament: Two Hontoria 9 centimetre guns, with powder and ammunition for 30 shots for each piece; twenty Remington rifles, with 100 rounds apiece, and bayonet or sword-bayonet; and twenty cutlasses."

The master of the Panama moved the court to allow further

proof upon the matters set forth in two test affidavits, filed by leave of the court, in which he testified more distinctly that the mounted guns and small arms which the Panama carried had not been shipped for the purpose of war, or in expectation of hostilities between the Spanish Government and the United States, but were taken on board pursuant to the requirements of that contract; and also testified that the Spanish Government had never taken possession of the Panama under the terms of the contract; and that until the capture he and his officers were ignorant of the existence of the war between Spain and the United States, and of any blockade of the port of Havana. And he asked leave to submit to the court the whole contract, as contained in a printed book, which was in the chart room of the Panama, and in the custody of the prize master, and which has since been sent up to this court as one of the exhibits in the cause.

By that contract, concluded between the Spanish Government and the Compania Transatlantica on November 18, 1886, and drawn up and printed in Spanish, the company bound itself to establish and to maintain for twenty years various lines of mail steamships, one of which included Havana, New York and other ports of the United States and of Mexico; and the Spanish Government agreed to pay certain subsidies to this company, and not to subsidize other steamship lines between the same points. Among the provisions of the contract, besides article 26, above quoted, were the following:

By article 25, new ships of the West Indian line must be of iron, or of the material which experience may prove to be the best; must have double-bottomed hulls, divided into watertight compartments, with all the latest improvements known to the art of naval construction; and "their deck and sides shall have the necessary strength to support the artillery that they are to mount." All the ships of that line must have a capacity for 500 enlisted men on the orlop deck, and a convenient place for them on the main deck. The company, when beginning to build a new ship, shall submit to the Minister of the Colonies her plans as prepared for commercial and postal service; "the Minister shall cause to be studied the measures

that should be taken looking to the rapid mounting in time of war of pieces of artillery on board of said vessel; and may compel the company to do such strengthening of the hull as he may deem necessary for the possible mounting of that artillery; said strengthening shall not be required for a greater number than six pieces whose weight and whose force of recoil do not exceed those of a piece of fourteen centimetres." The plans of ships already built shall be submitted to the Minister of Marine, in order that he may cause to be studied the measures necessary to adapt them to war service; and any changes that he may deem necessary or possible for that end shall be made by the company. But in both old and new ships the changes proposed by the Ministry must be such as not to prejudice the commercial purposes of the vessels.

By article 35, the vessels, with their engines, armaments and other appurtenances, must be constantly maintained in good condition for service.

By article 41, the officers and crews of the vessels, and, as far as possible, the engineers, shall be Spaniards.

By article 49, the company may employ its vessels in the transportation of all classes of passengers and merchandise, and engage in all commercial operations that will not prejudice the services that it must render to the State.

By article 60, when by order of the Government munitions of war shall be taken on board, the company may require that it shall be done in the manner and with the precautions necessary to avoid explosions and disasters.

By article 64, in case of the suspension of the mail service by a naval war, or by hostilities in any of the seas or ports visited by the company's ships, the Government may take possession of them with their equipment and supplies, having a valuation of the whole made by a commission composed of two persons selected by the Government, two by the company, and a fifth person chosen by those four; at the termination of the war, the vessels with their equipment are to be returned to the company, and the Government is to pay to the company an indemnity for any diminution in their value, according to the opinion of the commission, and is also, for

the time it has the vessels in its service, to pay five per cent on the valuation aforesaid. By article 66, at the end of the war, the Government may relieve the company of the performance of the contract if the casualties of the war have disabled it from continuing the service. And by article 67, in extraordinary political circumstances, and though there be no naval war, the Government may charter one or more of the company's vessels, and in that event shall pay an indemnity estimated by the aforesaid commission.

The District Court denied the motion of the master to take further proof; restored parts of the cargo to claimants thereof; gave claimants of other parts of the cargo leave to introduce further proof; and entered a final decree of condemnation and sale of the Panama and the rest of her cargo, upon the ground that she was enemy's property, and was upon the high seas at the time of the President's proclamation exempting certain vessels from arrest. 87 Fed. Rep. 927. The court also, on the application of the commodore commanding at Key West, and on the recommendation of the prize commissioners, ordered all the mounted guns and the ammunition therefor to be appraised by two officers of the Navy, and delivered to the commodore for the use of the Navy Department. The master of the Panama appealed to this court from the decree condemning the vessel.

The recent war with Spain, as declared by the act of Congress of April 25, 1898, c. 189, and recognized in the President's proclamation of April 26, 1898, existed on and after April 21, 1898. 30 Stat. 364, 1770. This proclamation declared, among the rules on which the war would be conducted, the following:

"4. Spanish merchant vessels, in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term: Provided, that nothing herein contained shall

apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage) or any other article prohibited or contraband of war, or any despatch of or to the Spanish government."

"6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade."

It has been decided by this court, in the recent case of *The Buena Ventura*, 175 U. S. 384, that a Spanish merchant vessel, which had sailed before April 21, 1898, from a port of the United States on a voyage to a foreign port, not having on board any officer in the military or naval service of Spain, nor any article contraband of war, nor any despatch of or to the Spanish government, was protected by the fourth clause of the President's proclamation of April 26, 1898, from condemnation while on that voyage; but that her capture, before that proclamation was issued, was with probable cause; and that she should therefore be ordered to be restored to her owner, but without damages or costs.

That case would be decisive of this one, but for the mails and the arms carried by the Panama, and the contract with the Spanish Government under which the arms were put on board.

It was argued in behalf of the claimant that, independently of her being a merchant vessel, she was exempt from capture by reason of her being a mail steamship and actually carrying mail of the United States.

There are instances in modern times, in which two nations, by convention between themselves, have made special agreements concerning mail ships. But international agreements for the immunity of the mail ships of the contracting parties in case of war between them have never, we believe, gone farther than to provide, as in the postal convention between the United States and Great Britain in 1848, in that between Great Britain and France in 1833, and in other similar con-

ventions, that the mail packets of the two nations shall continue their navigation, without impediment or molestation, until a notification from one of the governments to the other that the service is to be discontinued; in which case they shall be permitted to return freely, and under special protection, to their respective ports. And the writers on international law concur in affirming that no provision for the immunity of mail ships from capture has as yet been adopted by such a general consent of civilized nations as to constitute a rule of international law. 9 Stat. 969; Wheaton, (8th ed.) pp. 659–661, Dana's note; Calvo, (5th ed.) §§ 2378, 2809; De Boeck, §§ 207, 208. De Boeck, in § 208, after observing that, in the case of mail packets between belligerent countries, it seems difficult to go farther than in the convention of 1833, above mentioned, proceeds to discuss the case of mail packets between a belligerent and a neutral country, as follows: "It goes without saying that each belligerent may stop the departure of its own mail packets. But can either intercept enemy mail packets? There can be no question of intercepting neutral packets, because communications between neutrals and belligerents are lawful, in principle, saving the restrictions relating to blockade, to contraband of war, and the like; the right of search furnishes belligerents with a sufficient means of control. But there is no doubt that it is possible, according to existing practice, to intercept and seize the enemy's mail packets."

The provision of the sixth clause of the President's proclamation of April 26, 1898, relating to interference with the voyages of mail steamships, appears by the context to apply to neutral vessels only, and not to restrict in any degree the authority of the United States, or of their naval officers, to search and seize vessels carrying the mails between the United States and the enemy's country. Nor can the authority to do so, in time of war, be affected by the facts that before the war a collector of customs had granted a clearance, and a postmaster had put mails on board, for a port which was not then, but has since become, enemy's country. Moreover, at the time of the capture of the Panama, this proclamation had not been

issued. Without an express order of the Government, a merchant vessel is not privileged from search or seizure by the fact that it has a government mail on board. *The Peterhoff*, 5 Wall. 28, 61.

The mere fact, therefore, that the Panama was a mail steamship, or that she carried mail of the United States on this voyage, does not afford any ground for exempting her from capture.

The remaining question in the case is whether the Panama came within the class of vessels described in the fourth clause of the President's proclamation of April 26, 1898, as "Spanish merchant vessels," and as not "Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage) or any other article prohibited or contraband of war, or any despatch of or to the Spanish government."

On the part of the claimant, it was argued that the arms which the Panama carried, under the requirements of her mail contract and for the protection of the mails, are not to be regarded as contraband or munitions of war, within the sense of this clause; that "contraband," as therein referred to, means contraband cargo, not contraband portion of the ship's permanent equipment; and that, if the furnishings of a ship could be regarded as contraband, every ship would have contraband on board.

On the other hand, it was contended, in support of the condemnation, that the arms which the Panama carried, belonging to her owner, were contraband of war, and rendered her liable to capture; and that by reason of her being so armed, and of the provisions of her mail contract with the Spanish government, requiring her armament, and recognizing the right of that government, in case of a suspension of the mail service by war, to take possession of her for warlike purposes, she cannot be considered as a merchant vessel, within the meaning of the proclamation, but must be treated like any regular vessel of the Spanish navy under similar circumstances.

The claimant much relied on a case decided in 1800 by the French Council of Prizes, in accordance with the opinion and

report of Portalis, himself a high authority. Wheaton, (8th ed.) p. 460; De Boeck, § 81. In the case referred to, an American vessel, carrying ten cannon of various sizes, together with muskets and munitions of war, had been captured by French frigates; and had been condemned by two inferior French tribunals, upon the ground that she was armed for war, and had no commission or authority from her own government. The claimants contended that their ship, being bound for India, was armed for her own defence, and that the munitions of war, the muskets and the cannon that composed her armament did not exceed what was usual in like cases for long voyages. Upon this point, Portalis, acting as commissioner of the French government, reported his conclusion on the question of armament as follows: "For my part, I do not think it is enough to have or to carry arms, to incur the reproach of being armed for war. Armament for war is of a purely offensive nature. It is established when there is no other object in the armament than that of attack, or, at least, when everything shows that such is the principal object of the enterprise; then a vessel is deemed enemy or pirate, if she has no commission or papers sufficient to remove all suspicion. But defence is a natural right, and means of defence are lawful in voyages at sea, as in all other dangerous occupations of life. A ship which had but a small crew, and a considerable cargo, was evidently intended for commerce, and not for war. The arms found on this ship were evidently intended, not for committing acts of rapine or hostility, but for preventing them; not for attack, but for self-defence. The pretext of being armed for war therefore appears to me to be unfounded." The Council of Prizes, upon consideration of the report of Portalis, adjudged that the capture of the vessel and her cargo was null and void, and ordered them to be restored, with damages. *The Pégou*, or *Pigou*, 2 Pistoye et Duverdy, Prises Maritimes, 51; *S. C.* 2 Cranch, 96–98, and note.

But in that case the only question at issue was whether a neutral merchant vessel, carrying arms solely for her own defence, was liable to capture for want of a commission as a vessel of war or privateer. That the capture took place while there

was no state of war between France and the United States is shown by her being treated, throughout the case, as a neutral vessel; if she had been enemy's property, she would have been lawful prize, even if she had a commission, or if she were unarmed. She was not enemy's property, nor in the enemy's possession, nor bound to a port of the enemy; nor had her owner made any contract with the enemy by which the enemy was, or would be, under any circumstances, entitled to take and use her, either for war, or for any other purpose.

Generally speaking, arms and ammunition are contraband of war. In *The Peterhoff*, 5 Wall. 28, Chief Justice Chase, delivering the judgment of this court, said: "The classification of goods as contraband or not contraband has much perplexed text-writers and jurists. A strictly accurate and satisfactory classification is perhaps impracticable; but that which is best supported by American and English decisions may be said to divide all merchandise into three classes. Of these classes, the first consists of articles manufactured, and primarily and ordinarily used, for military purposes in time of war; the second, of articles which may be and are used for purposes of war or peace, according to circumstances; and the third, of articles exclusively used for peaceful purposes. Merchandise of the first class, destined to a belligerent country or places occupied by the army or navy of a belligerent, is always contraband; merchandise of the second class is contraband only when actually destined to the military or naval use of a belligerent; while merchandise of the third class is not contraband at all, though liable to seizure and condemnation for violation of blockade or siege." And it was adjudged that so much of the cargo of the Peterhoff, as consisted of artillery harness, artillery boots, and army shoes and blankets, came fairly under the description of goods primarily and ordinarily used for military purposes in time of war; and, being destined directly for the use of the rebel military service, came within the second, if not within the first class of goods contraband of war. 5 Wall. 58.

Yet it must be admitted that arms and ammunition are not contraband of war, when taken and kept on board a merchant

vessel as part of her equipment, and solely for her defence against "enemies, pirates and assailing thieves," according to the ancient phrase still retained in policies of marine insurance. Pratt, in his essay on the Law of Contraband of War, speaking of the class of "articles which are of direct use in war," says: "With respect to these no questions can arise. On proof of the use of the article being solely or particularly applicable to hostile purposes, the conveyance of it to the enemy would amount to such a direct interposition in the war as necessarily to entail the confiscation of the property." But he afterwards adds this qualification: "But even in the case of articles of direct use in war, an exception is always made in favor of such a quantity of them as may be supposed to be necessary for the use or defence of the ship." And again, speaking of "warlike stores," he says: "These are, from their very nature, evidently contraband; but every vessel is, of course, allowed to carry such a quantity as may be necessary for purposes of defence; this provision is expressly introduced in many treaties." Pratt, Contraband of War, xxii, xxv, xl. And at pages 239, 244, 245 of his appendix he quotes express provisions to that effect in the treaties between Great Britain and Russia in 1766, 1797 and 1801. See also *Cases of Dutch and Spanish Ships*, 6 C. Rob. 48; *The Happy Couple*, Stewart Adm. (Nova Scotia) 65, 69; Madison, quoted in 3 Whart. Int. Law Dig. § 368, p. 313.

But the fact that arms carried by a merchant vessel were originally taken on board for her own defence is not conclusive as to her character. This is clearly shown by the case of *The Amelia*, (1801) reported by the name of *Talbot* v. *Seeman*, 1 Cranch, 1. In that case, during the naval warfare between the United States and France near the end of the last century, a neutral merchant vessel, having eight iron cannon and eight wooden guns mounted on board, and a cargo of merchandise, sailed from Calcutta for Hamburg, both being neutral ports; and before reaching her destination was captured by a French cruiser, and put by her captors, with the cannon still on board, in charge of a French prize crew, with directions to take her into a French port for adjudication as prize; and on her way

thither was recaptured by a United States ship of war. The recapture was held to be lawful, and to entitle the recaptors to salvage before restoring the vessel to her neutral owner, because, as Chief Justice Marshall said, "The Amelia was an armed vessel commanded and manned by Frenchmen," "she was an armed vessel under French authority, and in a condition to annoy the American commerce." 1 Cranch, 32. And in *The Charming Betsy*, (1804) 2 Cranch, 64, that case was expressly approved, as a precedent to be followed under similar circumstances; but was held to be inapplicable where the arms on board at the time of the recapture were but a single musket and a small amount of powder and ball. 2 Cranch, 121. Notwithstanding that the Amelia was a neutral vessel, with an armament originally taken on board for defence only, and therefore, while in the possession of her neutral owner, would not (according to the French case above cited) have been liable to capture as an armed vessel, yet, after she had been taken possession of by the enemy, with the same armament still on board, and thus was in a condition to be used by the enemy for hostile purposes, the fact that the original purpose of the armament was purely defensive did not prevent her from being considered as an armed vessel of the enemy.

While the authorities above referred to present principles and analogies worthy of consideration in the case at bar, they furnish no conclusive rule to govern its determination. The decision of this case must depend upon its own facts, and upon the true construction of the President's proclamation.

As to the facts, there is no serious dispute. The matters stated in the test affidavits upon which the motion for further proof was based add nothing of importance to the facts disclosed by the testimony *in preparatorio*, and by the mail contract between her owner and the Spanish Government, which forms part of the ship's papers.

The Panama was a steamship of 1432 tons register, carrying a crew of 71 men all told, owned by a Spanish corporation, sailing under the Spanish flag, having a commission as a royal mail ship from the Government of Spain, and plying from and to New York and Havana and various Mexican ports, with

general cargoes, passengers and mails. At the time of her capture, she was on a voyage from New York to Havana, and had on board two breech-loading Hontoria guns of nine centimetre bore, one mounted on each side of the ship, one Maxim rapid-firing gun on the bridge, twenty Remington rifles and ten Mauser rifles, with ammunition for all the guns and rifles, and thirty or forty cutlasses. The guns had been put on board three years before, and the small arms and ammunition had been on board a year or more. Her whole armament had been put on board by the company in compliance with its mail contract with the Spanish Government, (made more than eleven years before, and still in force,) which specifically required every mail steamship of the company to "take on board, for her own defence," such an armament, with the exception of the Maxim gun and the Mauser rifles.

That contract contains many provisions looking to the use of the company's steamships by the Spanish Government as vessels of war. Among other things, it requires that each vessel shall have the capacity to carry 500 enlisted men; that that government, upon inspection of her plans as prepared for commercial and postal purposes, may order her deck and sides to be strengthened so as to support additional artillery; and that, in case of the suspension of the mail service by a naval war, or by hostilities in any of the seas or ports visited by the company's vessels, the Government may take possession of them with their equipment and supplies, at a valuation to be made by a commission; and shall, at the termination of the war, return them to the company, paying five per cent on the valuation while it has them in its service, as well as an indemnity for any diminution in their value.

The Panama was not a neutral vessel; but she was enemy property, and as such, even if she carried no arms, (either as part of her equipment, or as cargo,) would be liable to capture, unless protected by the President's proclamation.

It may be assumed that a primary object of her armament, and, in time of peace, its only object, was for purposes of defence. But that armament was not of itself inconsiderable, as appears, not only from the undisputed facts of the case, but

from the action of the District Court, upon the application of the commodore commanding at the port where the court was held, and on the recommendation of the prize commissioners, directing her arms and ammunition to be delivered to the commodore for the use of the Navy Department. And the contract of her owner with the Spanish Government, pursuant to which the armament had been put on board, expressly provided that, in case of war, that government might take possession of the vessel with her equipment, increase her armament, and use her as a war vessel; and, in these and other provisions, evidently contemplated her use for hostile purposes in time of war.

She was, then, enemy property, bound for an enemy port, carrying an armament susceptible of use for hostile purposes, and herself liable, upon arrival in that port, to be appropriated by the enemy to such purposes.

The intent of the fourth clause of the President's proclamation was to exempt for a time from capture peaceful commercial vessels; not to assist the enemy in obtaining weapons of war. This clause exempts "Spanish merchant vessels" only; and expressly declares that it shall not apply to "Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage) or any other article prohibited or contraband of war, or any despatch of or to the Spanish Government."

Upon full consideration of this case, this court is of opinion that the proclamation, expressly declaring that the exemption shall not apply to any Spanish vessel having on board any article prohibited or contraband of war, or a single military or naval officer, or even a despatch, of the enemy, cannot reasonably be construed as including, in the description of "Spanish merchant vessels" which are to be temporarily exempt from capture, a Spanish vessel owned by a subject of the enemy; having an armament fit for hostile use; intended, in the event of war, to be used as a war vessel; destined to a port of the enemy; and liable, on arriving there, to be taken possession of by the enemy, and employed as an auxiliary cruiser of the enemy's navy, in the war with this country.

The result is, that the Panama was lawfully captured and condemned, and that the decree of the District Court must be

Affirmed.

MR. JUSTICE PECKHAM dissented.